Affirmed without opinion by Judge Davis

Case dismissed announced

Submitted

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~486.~~ 250

EMILY F. WILEY AND ELIZABETH BROWN, APPELLANTS,

vs.

TRUMAN COOK.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

FILED JANUARY 5, 1871.

Dec 1871

SUPREME COURT OF THE UNITED STATES.

No. 466.

EMILY F. WILEY AND ELIZABETH BROWN, APPELLANTS,

vs.

TRUMAN COOK.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

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3 *Original bill of complaint.*

TRUMAN COOK
vs.
EMILY F. WILEY AND ELIZABETH BROWN. } No. 791. Equity docket 8.

To the honorable the judges of the supreme court of the District of Columbia, sitting in equity:

Truman Cook brings this his bill of complaint against Emily F. Wiley and Elizabeth Brown of the District of Columbia; and thereupon your orator complains and says, that, on or about the twenty-second day of August, A. D. 1865, the said defendant Emily F. Wiley executed a contract with your orator, a copy of which is herewith filed and marked Exhibit "A," and prayed to be taken as part of this bill of complaint; that, under said contract your orator has been engaged in the prosecution of the rights, claims, and demands, in said contract re-
4 ferred to, and that there has been secured an adjudication establishing, as your orator believes and charges, a large part, if not all, the claims and right in said contract specified.

And your orator further says, that the said Emily F. Wiley, and her husband, John Wiley, since deceased, did, on the 10th day of October, A. D. 1862, execute a certain deed to said Elizabeth Brown, prayed to be made a defendant to this bill, a copy whereof is herewith filed, marked "Exhibit B," and prayed to be taken as part of this bill of complaint, and which your orator avers conveyed a portion of the real estate referred to in his said contract. And your orator further showeth that the said Elizabeth Brown did, on the 31st day of October, A. D. 1862, execute her declaration of the trust upon which the said Exhibit "B" was executed, which declaration is herewith exhibited, marked "D," and made a part of this bill of complaint.

And your orator is advised and charges that the legal effect of said conveyance and declaration of trust is to vest the fee simple of
5 the said property in the said Emily F. Wiley, who is now a femme sole.

And your orator further states that he has demanded a deed of trust from said defendant Emily F. Wiley, in execution of the covenant in said contract, and that said defendant Emily F. Wiley, although professing willingness to execute such deed has failed to meet her engagement and conform to her promises to execute the same. And this complainant says that said defendant Emily F. Wiley has failed and refused to execute the same.

In consideration whereof and forasmuch as your orator is entirely remediless at law, and can only have relief in a court of equity, where matters of this nature are properly cognizable: To the end therefore that the said Emily F. Wiley may, upon her corporal oath, full, true, and direct answers make to all and singular the matters herein before stated and charged, as fully and particularly as if she were thereunto
6 specially interrogated; and that the said Emily F. Wiley may be decreed to perform said contract specifically, and may execute a deed of trust upon all the right, claims and property of the said Emily F. Wiley in said contract mentioned to secure the faithful performance of said contract, and that she may be enjoined from selling and disposing of any property, right, or claim in said contract referred to, until the payment of your orator's said claim under the same, and that your orator may have such other and further relief as the nature of his case may require:

May it please your honors to grant unto your orator the writ of subpœna of the United States of America to be directed to the said Emily F. Wiley and Elizabeth Brown, and commanding the said Emily F. Wiley and Elizabeth Brown at a certain day, and under pain to be therein mentioned, personally to be and appear before your honorable court, and then and there to answer all and singular the premises,
7 and to stand to, and perform and abide by such order and decree therein as to your honors may seem meet; and also the writ of injunction directed to the said Emily F. Wiley, enjoining and prohibiting her from selling or in any way disposing of the right, claim and property in said contract mentioned. And your orator will ever pray, &c.

TRUMAN COOK.

WM F. MATTINGLY,
Solicitor and of Counsel for Complainant.

Exhibit A to bill.

In consideration of services rendered and to be rendered by Truman Cook to me, in and about the prosecution of my claim as heir or distributee of my father, Tillotson P. Brown, I hereby agree to pay said Cook three thousand dollars, it being understood that said amount is not to be payable until my said claims are finally decided. And I hereby agree to give said Cook, at his request, a lien on my property for securing said amount.

8 Witness my hand and seal this 22d August, 1865.

EMILY F. WILEY. [SEAL.]

Witness—
R. J. BRENT.

EXHIBIT B.

John Wiley & wife to Elizabeth Brown. Deed.—Recorded 21st October, 1862.

This indenture made this twentieth day of October, in the year of our Lord one thousand eight hundred and sixty-two, between John Wiley, of the city of Washington, in the district of Columbia, and Emily F., his wife, of the first part, and Elizabeth Brown, of the same place, of the other part, witnesseth: That the said John Wiley and Emily F., his wife, for and in consideration of the sum of five thousand dollars, current money of the United , to them in hand paid by the said
9 Elizabeth Brown at and before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, have granted, bargained, sold, enfeoffed, conveyed, released, and confirmed, and by these presents do grant, bargain, sell, enfeoff, convey, release, and confirm unto the said Elizabeth Brown, her heirs and assigns forever, all the estate, right, title, and interest of them, the said John Wiley and Emily his wife, and to all that certain piece or parcel of ground situate and lying in the city of Washington aforesaid, and known and described as being a part of square numbered five hundred and twenty-seven, (527,) and being described as follows: Beginning for the same at the southeastern corner of said square, and thence running west along the line of North I street eighty-six (86) feet; thence north forty-nine (49) feet and three (3) inches; thence east eighty-six (86) feet to the line of Third street west, and thence south along the line of said Third street forty-nine (49) feet and three (3) inches to the place of beginning.

10 And also all that certain piece or parcel of ground situate and lying in the said city of Washington, and known and described

as square numbered six hundred and seventy-five, (675,) and containing all the lots in the said square—the said lots being numbered one, (1,) twenty-eight, (28,) inclusive; together with all the buildings, improvements, ways, alleys, rights, privileges, appurtenances, and other hereditaments to the same belonging, or in any manner appertaining, and the remainders, reversions, rents, issues, and profits thereof, and all the estate, right, title, interest, and claim of the said John Wiley, and Emily F., his wife, in law, equity, or otherwise in and to the same, and every part and portion thereof: To have and to hold the said hereinbefore described pieces or parcels of ground and premises, with the appurtenances, unto her, the said Elizabeth Brown, her heirs and assigns, to her and their sole use, benefit, and behoof forever.

In witness whereof the said John Wiley and Emily F., his wife,
11 have hereunto set their hands and seals, the day and year first herein before written.

JOHN WILEY. [SEAL.]
EMILY F. WILEY. [SEAL.]

Signed, sealed, and delivered in the presence of us—
THOMAS C. DONN.
GILBERT L. GIBERSON.

DISTRICT OF COLUMBIA, *Washington County, ss:*

We, Thomas C. Donn and Gilbert L. Giberson, justices of the peace in and for the county of Washington, in the District of Columbia, do hereby certify that John Wiley, a party to a certain deed, bearing date the twentieth day of October, 1862, and hereunto annexed, personally appeared before us in our county aforesaid, the said John Wiley being personally well known to us as the person who executed the said deed, and acknowledged the same to be his act and deed.

Given under our hands and seals this twentieth day of October, 1862.

THOMAS C. DONN, *J. P.* [SEAL.]
GILBERT L. GIBERSON, *J. P.* [SEAL.]

12 DISTRICT OF COLUMBIA, *Washington County, ss:*

We, Thomas C. Donn and Gilbert L. Giberson, justices of the peace in and for the county of Washington, in the District of Columbia, do hereby certify that Mrs. Emily F. Wiley, the wife of John Wiley, party to a certain deed bearing date the twentieth day of October, 1862, and hereunto annexed, personally appeared before us in our county aforesaid, the said Mrs. Emily F. Wiley being personally and well known to us as the person who executed the said deed, and being by us examined privately and apart from her husband, and having the deed aforesaid fully explained to her, she, the said Mrs. Emily F. Wiley, acknowledged the same to be her act and deed, and declared that she had willingly signed, sealed, and delivered the same, and that she wished not to retract it.

Given under our hands and seals this twentieth day of October, 1862.

THOMAS C. DONN, *J. P.* [SEAL.]
GILBERT L. GIBERSON, *J. P.* [SEAL.]

13 A true copy as recorded in liber J. A. S., No. 223, folio 304, &c., one of the land records of Washington County, in the District of Columbia.

[SEAL.] R. M. HALL,
Register.

SEPTEMBER 12TH, 1866.

EXHIBIT D.

Elizabeth Brown for Emily F. Wiley. Declaration in trust. Recorded 4th November, 1862.

To all to whom these presents shall come, I, Elizabeth Brown, of the city of Washington, in the District of Columbia, send greeting:

Whereas, by indenture bearing date the twentieth day of October, in the year one thousand eight hundred and sixty-two, John Wiley, of the said city of Washington, and Emily F., his wife, did grant and
14 convey to the said Elizabeth Brown, all the estate, right, title, and interest of them, the said John Wiley and wife, *and* to all that certain piece or parcel of ground, situate and lying in the city of Washington, aforesaid, and known and described as being a part of square numbered five hundred and twenty-seven, (527,) and being described as follows: Beginning for the same at the southeastern corner of said square, and thence running west, along the line of north D street, eighty-six (86) feet; thence north, forty-nine (49) feet and three (3) inches; thence east, eighty-six (86) feet to the line of Third street west, and thence south, along the line of said Third street, forty-nine (49) feet and three (3) inches to the place of beginning. And also all that certain piece or parcel of ground situate and lying in the said city of Washington, and known and described as square numbered six hundred and seventy-five, (675,) and containing all the lots in the said square; the said lots being numbered one (1) to twenty-eight, (28,) inclusive, together with the appurtenances: To hold the same to the said
15 Elizabeth Brown, her heirs and assigns forever; which said premises were the property of Tillotson P. Brown, late of the said city of Washington, deceased, and the interest in which, descended to the said grantors as the heirs at law of the said decedent.

Now, therefore, know ye that I, the said Elizabeth Brown, in consideration of the natural love and affection which I bear to my daughter, the said Emily F. Wiley, and also to carry out the purposes of the said conveyance to me, and to declare the trusts on which the said premises were conveyed, do, by these presents, make known, admit, and declare, that the said described premises, with the appurtenances, were conveyed to me, and that I now hold and will continue to hold the same, in trust only, for the sole and separate use of the said Emily F. Wiley, wife of the said John Wiley, for and during her natural life, and so as she alone, or such person as she shall appoint, shall take, use, and enjoy the rents, issues, and profits of the same, and every part thereof, and so as her said husband, or any future husband, shall not in
16 anywise intermeddle therewith, or the same be in any way or manner liable for any of his debts or obligations; and from and after the decease of the said Emily F. Wiley, in trust for the use of the heirs of the body of the said Emily F. Wiley, by the said John Wiley, or by any future husband, begotton or to be begotton, with full power to the said Emily F. Wiley, by any instrument of writing under her hand and seal, attested by two witnesses, to appoint the same among her heirs in such portions as she may think proper.

In witness whereof I have hereunto set my hand and seal this thirty-first day of October, in the year one thousand eight hundred and sixty-two.

ELIZABETH BROWN. [SEAL.]

Signed, sealed, and delivered in the presence of us—

THOMAS C. DONN.

GILBERT L. GIBERSON.

17 DISTRICT OF COLUMBIA, *County of Washington, ss:*

We, Thomas C. Donn and Gilbert L. Giberson, justices of the peace in and for the county of Washington aforesaid, do hereby certify that Elizabeth Brown a party to a certain instrument of writing bearing date the thirty-first day of October, 1862, and hereto annexed, personally appeared before us in our county aforesaid, the said Elizabeth Brown being personally and well known to us as the person who executed the said instrument of writing, and acknowledged the same to be her act and deed.

Given under our hands and seals this thirty-first day of October, A. D. 1862.

THOMAS C. DONN, *J. P.* [SEAL.]
GILBERT L. GIBERSON, *J. P.* [SEAL.]

I, R. M. Hall, register of deeds for Washington County, in the District of Columbia, do hereby certify that the foregoing and an-
18 nexed is a true copy of a declaration in trust of Elizabeth Brown for Emily F. Wiley, as recorded in liber J. A. S., No. 225, folio 69, &c., one of the land records for the county of Washington, District of Columbia.

Given under my hand and the seal of said office this 12th day of September, A. D. 1866.

[SEAL.] R. M. HALL,
Register.

Summons to answer.—Issued October 11, 1866.

In the supreme court of the District of Columbia, October 11, 1866.

TRUMAN COOK, COMPLAINANT,
against
EMILY F. WILEY ET AL., DEFENDANTS. } No. 791. Equity docket 8.

The President of the United States to Emily F. Wiley and Elizabeth Brown, defendants:

You are hereby commanded to appear in this court, at its first
19 special term, occurring twenty days after service of this subpœna, and answer the exigency of the bill, under pain of attachment and such other process of contempt as the court shall award.

Witness: D. K. Cartter, chief justice.

R. J. MEIGS, *Clerk.*

MEMORANDUM.—That the defendants are to enter their appearance in this suit in the clerk's office on or before the special term to which this writ is returnable; otherwise the bill may be taken for confessed.

Marshal's return.

"Summoned both, by serving a copy on El'z'th Brown, and on Mrs. Emily F. Wiley, by leaving a copy with her mother, Mrs. Brown, at her place of residence.

"Oct. 12th, '66.

"D. S. GOODING,
"*Marshal.*"

Order extending time to answer.—Filed Nov. 6, '66.

TRUMAN COOK
vs.
EMILY F. WILEY ET AL. } 791. Equity docket 8.

20 Ordered by the court that the time within which the def't shall answer in above-entitled cause be extended to the 20th day of Nov., 1866.

Nov. 6, 1866.

A. B. OLIN, *Justice.*

Answer of def't, Emily F. Wiley.—Filed Dec. 4, 1866.

TRUMAN COOK
vs.
EMILY F. WILEY. } 791. Equity docket 8.

The answer of Emily F. Wiley, the def't to the bill of complaint of Truman Cook, complainant.

The defendant, now and at all times hereafter, saving and reserving unto herself all benefit and advantage of exception which can or may be had or taken to the many errors, uncertainties, and other imperfections in the said complainant's said bill of complaint contained, for answer thereunto, or unto so much and such part thereof as this defendant is advised is or are material for her to make answer unto, aaswering, saith:

21 That she admits that she employed the said Truman Cook as her attorney and agent, and executed a contract with said Cook similar to that a copy of which is filed with said complainant's bill of complaint, and in and by which this defendant stipulated to pay the said Cook the sum of three thousand dollars, when all her claims and rights as the heir or distributee of the late T. P. Brown, deceased, should have been decided, & at said time to give him a lien upon the property demised to her from the said T. P. Brown, to secure such payment.

This defendant, further answering, says: That she discovered that the said Cook was cheating and defrauding her in the cause of his said employment, & that she was compelled to discharge him therefrom.

And that, though the claims and rights of this defendant as heir and distributee of the said Brown are not yet finally determined, and the administration of the estate of the said Brown is not yet closed,

22 the said Cook has rendered no services to this defendant in regard thereto, nor offered any services for several months past, but acquiesced in the termination of said employment as proposed by this defendant, and agreed thereto.

This defendant, further answering, says: That Elizabeth Brown was legally indebted to this defendant, and that J. Harry Thompson was appointed by this court as trustee to sell certain property of the said Elizabeth Brown, under a certain deed of trust from the said Elizabeth Brown to the late Thomas Smith; that the said J. Harry Thompson, trustee as aforesaid, applied to this court for an order permitting the creditors to buy, and authorizing him to credit the amount of their purchases on the debts due them, as will appear by reference to the proceedings in the cause of Thompson vs. Rutherford et al. in this court,

& to which this defendant begs leave to refer as part of this answer.

23 That the said complainant, as agent of this defendant, obtained the sale of the said property, to wit, on the sixth day of October, A. D. 1865, for the purpose of buying a portion thereof for this defendant, and did, at said sale, purchase for and on account of this defendant the following-described premises, to wit: Lots 7, 8, 9, 10, 11, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, in the recorded subdivision of square No. 676, said sub-divis. being recorded in *subdivision recorded* W. F., No. 1, folio 109, in the office of the surveyor of said city, and did agree, on behalf of this defendant, to pay therefor the sum of twenty-one thousand three hundred and seventy-four dollars and forty cents, with which amount the debt due this defendant was credited by said trustee, as will appear by reference to his report of said sale filed in said cause of Thompson vs. Rutherford, hereinbefore referred to.

24 This defendant further says that, relying upon the integrity and good faith of her said agent, the said complainant, she authorized him to bid, at said sale, such sum as he might think the property appeared reasonably worth, and in all matters appertaining thereto to exercise his discretion in behalf of this defendant, and on her account.

That, entirely ignorant of the value of property herself, and not informed in regard to matters of business, she was obliged to trust to some agent in the premises, and reposed implicit confidence in the said complainant.

And this defendant says, that after accepting a deed of said premises, she learned that her said agent had abused her confidence, and used the authority reposed in him for the purpose of cheating and defrauding this defendant.

That said property so purchased as aforesaid, is not worth to exceed the sum of twelve thousand dollars, and she believes that said complainant knew its value at the time he made the said purchase as

25 aforesaid, but that having given the said complainant full authority to purchase on her behalf and bind her by any contract he might make in that regard, this defendant was bound to accept said property at the price agreed to be paid therefor by said complainant, and the same has therefore been credited upon the amount due this defendant by the said Elizabeth Brown, all which will appear by reference to the report of said trustee filed among the papers in the said case of Thompson vs. Rutherford in this court.

And this defendant says, that the consideration of the said note given by this defendant to the said complainant, has wholly failed, and that he is not entitled to any benefit therefrom, by reason of his impositions and frauds practiced on this defendant in his said employment as her agent as aforesaid, and she prays to be hence dismissed, with her reasonable costs in this behalf most wrongly sustained.

EMILY F. WILEY.

R. T. MERRICK, *Solicitor and of Counsel.*

26 EMILY F. WILEY, being duly sworn, says that the matters and things set forth in the aforegoing answer are true, and when the same are set forth as being on information and belief, she believes them to be true.

EMILY F. WILEY.

Subscribed & sworn to before me, Dec. 4, 1866.

R. J. MEIGS, *Clerk.*

Replication to defendant's answer.—Filed Feb'y 4, 1867.

In the supreme court of the District of Columbia.

TRUMAN COOK
vs.
EMILY WILEY, ET AL. } 799. Equity docket 8.

The replication of Truman Cook, complainant, to the answer of Emily Wiley, defendant.

This repliant saving and reserving unto himself all and all manner of advantage of exception to the manifold insufficiences of the said
27 answer, for replication thereunto saith, that he will aver and prove his said bill to be true, certain, and sufficient in the law to be answered unto, and that the said answer of the said defendant is uncertain, untrue, and insufficient to be replied unto by this repliant; without this, that any other matter or thing whatsoever in the said answer contained, material or effectual in the law to be replied unto, confessed and avoided, traversed or denied, is true. All which matters and things this repliant is and will be ready to aver and prove as this honorable court shall direct, and humbly prays as in and by his said bill he hath already prayed.

W'M F. MATTINGLY,
Sol'r for Compl't.

Motion for and order granting leave to amend answer.—Filed Jan'y 18, 1868.

TRUMAN COOK
vs.
EMILY F. WILEY. } 791. Equity docket 8.

The defendant, by her solicitors, moves the court for leave to
28 amend her answer, the said amendment being material, as she is advised, to the defense of this suit.

JNO. D. McPHERSON,
Sol'r for Def't.

JAN'Y 18, 1868.

Leave to amend answer, provided the amendment be filed on or before the 20th instant.
By the court.

Amended answer.—Filed Jan'y 20, 1868.

In the supreme court of the District of Columbia.

TRUMAN COOK
vs.
EMILY F. WILEY. } In equity, 791.

And now comes the defendant, and by leave of the court, first had and obtained, amends her answer in this cause heretofore filed, by adding thereto as follows:

And this defendant, further answering, says that at the time
29 when she executed the agreement in the said bill of complaint mentioned, she was party to a suit pending in the circuit court of the District of Columbia, involving matters of great and engrossing interest to her, and that by reason of her anxiety and preoccupation of mind, she was incapable of acting with due judgment and circumspection in matters pertaining to her interests, and the complainant, well knowing the premises, and designing and intending to take advantage of this defendant's fears and anxieties, and to defraud her, pretended to have in his possession a document or deed of great importance to this defendant, and threatened to hold and use the same to the injury of this defendant, unless she would purchase his forbearance; and the better to work upon her fears, the complainant refused to exhibit to her the said document or to explain its true character; and this defendant, moved by his threats, and yielding to her fears, signed the agreement set forth in the bill of complaint in order to purchase his forbearance in the matter of the said document.

30 And this defendant further says that the representations of the complainant in regard to the said document were false, and made with intent to deceive this defendant, and that the said document properly belonged either to this defendant or to her mother, Mrs. Brown, and the complainant had no right to the possession of the same; and this defendant believes he had improperly obtained the same from the said Mrs. Brown; and had this defendant known the true character of the document in question she would not have signed the said agreement, and the said agreement was procured from this defendant by the complainant by his fraud.

And this defendant, further answering, says that the consideration set forth in the said agreement of services rendered and to be rendered by the said complainant was not the true consideration thereof, but the consideration for the same, as far as there was any consideration, was the forbearance of the complainant to execute his threats in regard to the document hereinbefore mentioned. It is true, however, that the
31 said complainant has rendered to this defendant some services for which she is willing to make a fair and reasonable compensation, to be determined by the court, if, upon consideration of the facts elsewhere stated in this defendant's answer, this court shall determine that any compensation is due him.

EMILY F. WILEY.

JOHN D. MCPHERSON,
Solicitor for Defendant.

Sworn to and subscribed before me Jan'y 20, 1868.

R. J. MEIGS, *C'lk.*

DISTRICT OF COLUMBIA, *Washington County.*

I, R. J. Meigs, clerk of the supreme court of the District of Columbia, hereby certify that, on this 20 day of January, 1868, before me, personally appeared Emily F. Wiley, and made oath that the matters and things stated in the foregoing amendment are, of her own knowledge, true, and those stated upon the information of others she believes to be true.

R. J. MEIGS, *Clerk.*

32 *Plaintiff's testimony.—Filed April 29, 1869.*

In the supreme court of the District of Columbia.

TRUMAN COOK, PLAINTIFF,
vs.
EMILY F. WILEY, DEF'T. } 791. In chancery.

DISTRICT OF COLUMBIA,
County of Washington, ss:

Be it remembered that on the 16th day of January, in the year of our Lord one thousand eight hundred and sixty-eight, I, Mahlon Ashford, an examiner in chancery, did cause to be personally present at my office, No. 2, Columbia College law building, in the city of Washington, in said District, Truman Cook and other witnesses, to testify on the part and behalf of the plaintiff in a certain cause now depending in the supreme court of the District of Columbia, wherein Truman Cook is complainant and Emily F. Wiley is defendant.

33 *Deposition of Truman Cook for complainant.*

And the said Truman Cook, being about the age of 40 years, and being by me first duly sworn to testify the truth, the whole truth, and nothing but the truth, touching the matter at issue in said cause, I did carefully examine said Truman Cook, and he did thereupon depose, testify, and say as follows:

In answer to questions by Mr. Mattingly:

I am the complainant in this cause. I rendered to the defendant, Mrs. Wiley, services under the agreement filed in this cause as Exhibit "A" in the prosecution of her claims as heir-at-law of her father, and fulfilled entirely that agreement. I never, at any time, was discharged by her, and consequently never acquiesced in any such discharge.

Cross-examined by Mr. McPherson:

After the date of that agreement, I continued on as I had done before in aiding Mr. Brent, her counsel, in preparing the case, and in
34 making up the case for the final trial of the case. I don't recollect the date of the last trial of the cause; it was after the date of the agreement. I never had any difficulty whatever with Mrs. Wiley until after the whole thing had been accomplished, and after the last trial. My services continued until after the case was disposed of finally by the Supreme Court. About six months after the case was finally disposed of, Mrs. Wiley came to my office and consulted with me in relation to some other matter not connected with this case. I then told her that she would have to pay me for what I had done in this case. She replied that she expected to have some money the next week, and would settle with her counsel and myself, both. She had never before that time intimated to me that my services were no longer required. She never intimated to me that she regarded me as unfaithful. I don't recollect of ever refusing or declining to do anything requested
35 of me by her or counsel. In the first place I went to Baltimore, and an agreement was prepared by Mr. Brent between himself and Mrs. Brown, stipulating for his fees, and the terms upon which he was to prosecute the suit. My first services were in procuring the discount of a note of Mr. Brown's, in order to raise money with which to

prosecute the suit, and in the next place I had to procure from Sweeny & Huyck bonds & notes held by them & belonging to the estate of Tillotson Brown, *on* which Sweeny & Huyck, it was understood, held as security for an overdraft for some $1,800. In the next place I had to settle up the estate, which I did faithfully, and both Mrs. Brown and Mrs. Wiley have often said to me that but for my efforts in their behalf there would have been little or nothing to fight for. I have received some compensation from Mrs. Brown for services rendered to her, but her interests and her daughter's were so closely interwoven that it
36 was difficult for me to separate the services rendered to one from those rendered to the other. I also rendered valuable services in procuring evidence in the case. I hunted up witnesses, ascertained what they could prove, took it down, and reported it to the counsel; and, throughout the whole case, both at day and night, I devoted my time and attention to the general management of the case; and these services continued after this agreement was made, and until the case was finally determined. I am myself a lawyer. I consider the services I rendered those people worth fifteen thousand dollars. There were four trials of the cause, each trial consuming from four to six weeks.

TRUMAN COOK.

Subscribed and sworn to before me this 16th day of January, 1868.
M. ASHFORD, *Examiner.*

37 Adjourned until to-morrow, 17th instant, at 3 o'clock p. m.
M. ASHFORD.
Examiner.

1868. January 17th. Met pursuant to adjournment; when, no witnesses appearing, the examination on the part of complainant was adjourned until the 12th day of March, 1869.

M. ASHFORD.
Examiner.

1869. March 12th. Met pursuant to adjournment, when Mr. Cook was recalled, and further testified, as follows:

The property recovered, in the suits in which my services were rendered consists of a square of ground directly east of St. Aloysius church, which I believe to be worth at present, $50,000; my means of judging is that the square immediately south of it, and of equal dimensions, was sold by Mrs. Brown, and brought, I think, over $46,000. Then
38 there is a brick house and lot at the corner of 3d and I streets, and a frame house adjoining, worth in all about $15,000. I reclaimed from Messrs. Sweeny & Huyck, Missouri and Tennessee State bonds and notes of hand, from Marshall Brown to T. B. Brown, in all amounting, the best of my recollection, to about $42,000. There was an overdraft with Sweeny and Huyck of Elizabeth Brown, administratrix of the estate of T. B. Brown, of which estate Mrs. Wylie was distributee, of almost $1,800. In order to get the bonds and notes from Sweeny & Huyck, I procured a discount by Dr. Gunton, of one note of Marshall Brown to T. B. Brown, amounting to over $6,000, Gunton giving the full face of the note; and with a portion of this money I paid the overdraft and *and* upon the order of Mrs. Brown, as administratrix, I procured the trunk containing the bonds and notes. Mr. Sweeny, of the firm
39 of Sweeny & Huyck personally requested me to endorse the order,

which I did. My anxiety in this matter to consummate it early, was induced by the apprehension of the failure of Messrs. Sweeny & Huyck, which not long after took place. I made the arrangement with Dr. Gunton through my personal influence, as none of the banks in the district were at the time doing a discount business. There was other property that came to the distributee of Mrs. Wiley, the defendant in this suit, by reason of the death of Jesse Hough. The property coming to the distributee from that direction was an undivided portion of land in the District of Columbia, part of which enured to Marshall Brown and one George Prentiss, the whole value of which I have not been able to ascertain; but to the best of my knowledge & belief, Mrs. Wiley's portion is worth some $80,000. From my best information, from all parties interested in the matter, the property recovered for Mrs. Wiley, due primarily at least to my exertions, was or is worth $180,000;
40 I mean by that, real & personal. When the bond for which this suit was brought was executed, I had caused Mrs. Brown and Mrs. Wiley, by suggestion and argument, to make an arrangement with Mess. Brent & Merrick, att'ys at law, for a percentage of the amount that might be recovered in the suit then pending, "Wiley vs. Brown." The arrangement was that Mrs. Wiley should pay R. T. Merrick 10 per c't upon the gross amount of the proceeds, and that Mrs. Brown should pay R. J. Brent 10 per c't in the same; not to exceed, both together, $20,000. I was also authorized at the time, by both and each of them, to employ Jno. E. Norris, att'y at law, for the sum of $1,500. At the same time it was arranged for Mrs. Wiley to give me a bond for $2,000. Mr. Brent was present at the consummation of this arrangement. Mr. Brent & myself started from the second story of the house on 5th st. where Mrs. Brown and Mrs Wiley resided. When Mr. Brent had arrived at the vestibule of the outer door, Mrs. Wiley from the top of the stairs called for me to halt; she told me to say to Mr. Brent to
41 make my bond out $3,000 instead of $2,000, assigning as a reason for the change of her views, that she wished to be generous,—that I had been to her a father and a brother. I followed on and overtook Mr. Brent, and we went to Mr. Merrick's office, where the papers were made—Mr Brent drawing up the bond from Mrs. Wiley to myself for $3,000; one in favor of Jno. E. Norris for $1,500 & one for himself as to the percentage; Mr. Merrick drawing up his percentage as above stated. Thereupon Mr. Brent & myself repaired to the residence of Mrs. Wiley and Mrs. Brown, when he said to Mrs. Wiley, "Mr. Cook instructed me to make your bond to him $3,000 instead of $2,000, as stated in my presence. Is that right, Mrs. Wiley?" She answered "Yes," She took the bond; read it over & signed it, & Brent witnessed it; she also signed at the same one for Mr. Norris & Mr. Merrick, both of which I think I witnessed. Mrs. Elizabeth Brown then, at the same time executed the bond to Mr. Brent, which I witnessed. I never used any threats, or persuasions of any kind to persuade Mrs. Wiley
42 to sign the bond to me for $3,000.

The bonds above referred to were executed not long anterior to the commencement of the fourth and last trial of "Wiley vs. Brown," in the Supreme court of the District of Columbia. The statement of Mrs. Wiley, in her examination-in-chief, that she signed this bond in order to get possession of a paper, which I represented was of great importance, in reference to the house on 5th street, as therein stated, is utterly false in substance & fact, & without the least shadow of foundation; that some months after the final decision of the case of Wiley & Brown, Mrs. Wiley & myself, walking on 7th st. in this city, and

many months after the said bond was executed, had a conversation at my instance in relation to deed of Elizabeth Brown to Tillitson P. Brown, of some property in 5th st. west, on which Mrs. Brown had built the large brick house she was then occupying. I then told her I had obtained that deed out of some papers that had been in the hands of other parties than Mrs. Brown, with the view of holding it, as it had not been recorded, until the final sttlement of the case—Wiley vs. Brown, & that I then proposed to give it to her mother. She
43 expressed great solicitude to see the paper, saying she would give me $3,000 for it; that it was hers, & if I would not deliver it to her mother. Thereupon I agreed to bring it to her room the next night, with the understanding that I should give it to her, in presence of her mother, and they should settle what should be done with it. As agreed, I took it to her room the next night, and asked her to call her mother in. Her reply was, "I will." She informed me, soon after, that her mother would be in in a few minutes; and, in the meantime, wished to look at the deed. Her mother did not come in, and when I was ready to go, I asked her for the deed, when she replied, "Let me keep it till to-morrow night, when mother and I can see about it." I remarked that I did not like to leave the deed with her, as it was not recorded, and that I wanted the matter settled between her and her mother in my presence. She then replied that she
44 wished to look it over, and she would deliver it in my hands the next day; and as an assurance that she would do it, pledged her sacred honor that she would give me $1,000, if she did not deliver it in my hands the next day. I went there the next day, but failed to see her. A few evenings subsequent, I met her and her mother together, in Mrs. Willey's room, when Mrs. Brown brought forward her deeds for the property in 5th st., in order to become better informed as to her property there. She, Mrs. Wylie, and myself, looked the deeds over, when I said to Mrs. Brown, in presence of Mrs. Wylie, that at the moment that deed in question Mrs. Brown had was recorded, Mrs. Wylie will have a fee-simple title to 20 or more feet front of the ground on which the new house stood. Mrs. Brown had built on 5th st. Mrs. Brown complained that I had done wrong in keeping that paper. I said that as her agent, and as the agent of Mrs. Wylie, I had
45 done so for their best interests, under apprehension that Marshall Brown might, in some way, get hold of the deed; and that I had no doubt that during the early trials of Wylie vs. Brown, he, Marshall Brown, would have given $10,000 for that deed, but that I had trustfully and faithfully held it for their benefit. I was the recognized custodian of the papers of both parties. Mrs. Wylie gave me written power of attorney to act for her in the purchase of property. She never gave me power of attorney in the suit against Brown, but recognized all my acts, and took my advice on all matters. I was not immediately acting in one trial out of the four, but I had unremittingly labored in procuring witnesses, in vastly extended and repeated conversations, by night and by day, with Mrs. Wylie and Mrs. Brown, endeavering to extract from their desultory conversations matter material to the issues, both
46 as to law and evidence. In relation to the testimony of H. G. Hugely, I had a conversation with him, while he was employed in Mrs. Brown's drug store, in relation to matters pertaining to the working up of Mrs. Wylie's case *vs.* Brown, because of his being custodian of some funds that were devoted to the expenses of the suit; and, at one time, in the street, I mentioned to him, in connection with a conversation in which I averred my ardent labors in Mrs. Wylie's behalf, that

I had secured a paper of much importance to Mrs. Wylie and Mrs. Brown, which I had no doubt Marshall Brown would pay a large amount to get hold of, but did not say, with reference to the said paper, that it, in any way, would be beneficial to myself or my child. I never told him, at any time, that my child would be worth $40,000, by reason of my having possession of any paper of Mrs. Wylie or Mrs. Brown. The last interview I had with Mrs. Wylie, and after I had delivered her the
47 deed, I asked her to give me a lien on her property, according to the stipulations of the bond for $3,000. She replied that in a few weeks she would have the money to pay, and would pay myself, Norris, & Merrick. Since that time, I have never had any conversation with her. She never intimated to me before bringing this suit, that any threats or misrepresentations were used to induce her to sign the bond, or anything to that effect.

Adjourned until Tuesday, March 16th, at 2 o'clock p. m.

M. ASHFORD,
Examiner.

Met pursuant to adjournment, when the counsel for the defendant not appearing, but counsel for complainant being present, and ready for cross-examination, the further examination was adjourned to Saturday, March, 20th, at 2 o'clock p. m.

M. ASHFORD,
Examiner.

48 Saturday, March 20th, 1869, 2 p. m. Met pursuant to adjournment, when the cross-examination of Truman Cook was proceeded with as follows:

In answer to questions by Mr. McPherson:

I made the arrangement with Mr. Merrick; also, Mr. Brent had been in the case from the beginning; he was employed by Mrs. Brown, and got his pay from her. Merrick made his arrangements with Mrs. Wylie, as did Mr. Norris I gave Mr. Merrick directions to draw his bond at 10 per cent.; he had it drawn for 20 per cent. previously. Mrs. Wylie went with me to see Mr. Merrick at his office before he was employed, and before the bond was made. I afterwards rendered service under both Brent & Merrick's directions. I am not certain that there were witnesses examined on the fourth trial that were not examined on the second and third. I hunted up witnesses after the bond was given me by Mrs. Wylie. One was Mrs. Hodgson, who lived on 10th street; also, Mr. & Mrs. Burch, who lived at
49 the same place; also, a Mrs. Murphy, a very important witness, who I found at the same place; also, a Mr. Speak, who lived at the railroad gate. I consulted with these witnesses at their house. Mrs. Brown, and Mrs. Wylie, and also the counsel, were sometimes present at these consultations. I also hunted a man who kept a female seminary at Chester. I am not certain whether I got him for the fourth or second trial. Their expenses down here were paid by me, and I was afterwards reimbursed by Mrs. Brown. I got the deed I have testified about from Tom King, a lawyer; I don't know how he got *them:* he left the city, I don't know when; I have not seen him for some time. My object for holding the deed was to secure it against it getting into the hands of parties who might make an unfair use of it. I couldn't say how long I held it, but it was a long time. I believed that Mar-
50 shall Brown would have given $10,000 for it. I never caused any proposition to be made to him for its sale or delivery. One of the

principal reasons for not making Mrs. Wylie acquainted with my having it, and Mrs. Brown also, was, I feared it would make a violent quarrel between them, and that would be another source of creating inharmony about the suit going on. I intended, when the case was over, to have an interview with Mrs. Brown and Mrs. Wylie together, and let them dispose of it as they thought proper. After the bond was given, I had a conversation with Mrs. Wylie on 7th st., when I broached the subject about the title deed, and I think the trial was over at this time. I know the trial was over. Mrs. Wylie then proposed to give me $3,000 for that paper. The next night I had the conversation with Mrs. Wylie to which I have testified in my examination-in-chief.

TRUMAN COOK.

51 Sworn to and subscribed before me this 20th day of March, A. D. 1869.

M. ASHFORD,
Examiner.

Adjourned until Tuesday, March 23d, 1869, at 2 o'clock p. m.

M. ASHFORD,
Examiner.

1869. Tuesday, March 23d, 2 o'clock p. m. Met pursuant to adjournment, when the complainant produced as a witness Mr. R. J. BRENT, att'y at law, who, being duly sworn, deposes and says:

Being shown by the complainant the paper dated 22d August, 1865, signed by Emily F. Wylie, and being asked to state his recollection of the cer'monies attending the execution of said paper, the witness states:

To the best of my recollection, was called on by Mr. Cook, at the office of Messrs. Brent & Merrick, and requested to prepare two
52 agreements to be executed by Mrs. Emily F. Wylie and Mrs. Elizabeth Brown, respectively. I prepared the paper now shown me, marked Exhibit M. A., and, also, another paper now shown me, marked M. A. No. 2, and I proceeded, with Mr. Cook, to Mrs. Brown's house, on 5th st., and found Mrs. Brown and Mrs. Wylie there; and I was very particular in reading and explaining each of the said papers to the respective parties. I recollect distinctly that Mrs. Wylie said to me promptly that the paper was all right, and she had no hesitation in signing it; that witness, as far as I could, *I* cautioned Mrs. Brown against signing the paper on her part, as I told her that perhaps it was a high compensation. This I said in presence of Mr. Cook, and it caused some feeling, both Mrs. Brown and Mrs. Wylie seeming to be, from their manner, displeased at my suggestions. Considering them both competent to manage their own affairs, and Mrs. Wylie particularly
53 intelligent and decided in the matter, I relinquished all further opposition, when they signed the papers respectively, as they purported to be signed, and witnessed them. The reason why I more particularly cautioned Mrs. Brown was, that Mrs. Wylie had said that, as my contract in the case was with her mother, she regarded me as her mother's counsel, and had or was to engage Mr. Merrick as her counsel. I well know of the attention of Mr. Cook to the affairs growing out of the administration of Tillotson P. Brown's estate, and consider that Mr. Cook rendered important services in the matter; and, further, that witness considered, and for that reason cautioned Mrs. Brown that she ought not to pay as much as Mrs. Wylie, as the principal benefit of the suits and administration, in the event of success, was to be in favor of Mrs.

Wylie. Mr. Cook came to Baltimore, and made the contract with me, and paid me my retaining fee ($500) in the case of Wylie vs. Brown, and rendered constant, zealous, & faithful services in the preparation
54 and management of said cause, bringing witnesses for examination by the counsel. I don't hesitate to say, from my knowledge, of his services, that $6,000 would not be too much for Mrs. Wylie to pay, considering the full amount I understand she has realized by the suit, and which is much greater than I supposed it would be at the time of those agreements. The claim of Mrs. Wylie referred to in said agreement has been finally decided in her favor by the judgement in the orphans' court rendered on the verdict prior to the filing of the bill in this cause.

ROBERT J. BRENT.

Sworn to and subscribed before me this 23d of March, A. D. 1869.
M. ASHFORD, *Examiner.*

Mr. Truman Cook corrects a statement he made on his previous examination "that he was absent on the third trial," and states by a memorandum made by him "that he was present on the first, third, and
55 fourth trials of Wylie vs. Brown;" and that the last trial of Wylie vs. Brown was in the months of November & December, 1865."

"The papers, now produced and marked M. A. No. 3, 4, 5, 6, 7 & 8, are each in the handwriting of Mrs. Wylie, and were sent to me by her.

"TRUMAN COOK."

Sworn to and subscribed before me this 23d day of March, A. D. 1869.
M. ASHFORD, *Examiner.*

.The complainant here closed his testimony.
M. ASHFORD, *Examiner.*

56 *Depositions for the defendant.*

In the supreme court of the District of Columbia.

TRUMAN COOK
vs.
EMILY F. WILEY. } No. 791. In chancery.

DISTRICT OF COLUMBIA, *County of Washington, to wit:*

Be it remembered, that on the 14th day of February, in the *year* A. D. 1868, I, Mahlon Ashford, an examiner in chancery, did cause to be personally present at my office, No. 4 Columbian College Law Building, 5th st. bet. D & E sts., in the city of Washington, in said district, Emily F. Wiley and others, to testify on the part and behalf of the defendant in a certain cause now depending in the supreme court of the District of Columbia, wherein Truman Cook is complainant, and Emily F. Wiley is defendant.

M. ASHFORD,
Examiner in Chancery.

57 *Deposition of Emily F. Wiley for defendant.*

And the said Emily F. Wiley, being about the age of thirty years, and being by me first duly sworn to testify the truth, the whole truth,

and nothing but the truth, touching the matter at issue in said cause, I did carefully examine said Emily F. Wiley, and she did thereupon depose, testify and say, as follows:

In answer to questions by Mr. McPherson:

I am the defendant in this cause. I signed the paper marked Exhibit "A," attached to the bill of complaint or something similar to it.

Question. At the date of this agreement, what service, if any, had Mr. Cook rendered to you in the transaction of your claims as distributee of your father's estate.

Answer. He had rendered me no services in regard to the matters stated in the agreement.

(Question and answer objected to.)

58 He had rendered services to my mother, and she paid him for them. My mother was managing the case entirely, and she engaged him. The whole matter was placed by me in the hands of my mother, and I made no contracts in regard to it with any one, except Mr. Merrick.

Question. State why and under what circumstances you signed the agreement before referred to in Exhibit "A."

Answer. I signed this paper in order to get possession of a paper which Mr. Cook represented was of great importance, concerning the house on 5th st. He said that if I did not give him three thousand dollars for it that he would sell it to Marshall Brown, and he would get the property, and we would be left homeless. He told me this a great number of times. He would not tell me what the paper was. He afterwards gave me the paper. It was a deed from my mother to my father.

59 I can't recollect exactly the time that it was delivered to me. I don't think that the complainant rendered me any service in the prosecution of the case, after the signing of the agreement. The complainant rendered me some services, but not about the prosecution of these claims. I gave him written authority in respect to what he did for me. One service was to buy the store on the corner of 3rd street and the avenue. He also bought in a piece of property for me on North Capitol street. I gave him written directions, because he requested it himself. I signed the agreement because it was extorted from me. I was frightened into signing. I believed that Mr. Cook's representations were true, and that he had in his possession the paper referred to by him, and that it might injure mother or myself. I don't know who drew the paper "A." I gave no one any directions to draw it. I always gave him, the complainant, written orders for everything that he did for me, and as near as I can remember the acts I have mentioned, are all the acts he ever performed for me.

60 Cross-examined by Mr. Mattingly:

I think there were four trials of the case, involving the question of paternity; I suppose my mother and myself were equally interested in the case; I know very little what was done, or what services were rendered in those for the greater part of the time. During the litigation Mr. Cook was at our house nearly all the time, talking about the case; it was the subject of conversation amongst all of us, both black and white; I don't remember that date of the delivery of the deed I have spoken of, to me by Mr. Cook; it was a long time after the paper "A" was signed; he would not give it to me after I signed the agreement, and I had hard work to get it from him; I don't remember ever saying to Mr. Merrick, Mr. Brent, and Mr. Norris, or either of them,

that if it had not been for Mr. Cook I should not have had a house over my head; I am sure I never said such a thing; my mother was present when I signed paper "A;" Mr. Brent did not write the paper in
61 my presence; the paper was brought there by either Mr. Cook or Mr. Brent; I did not specify the sum; Mr. Cook specified it; he named three thousand dollars; I had no conversation whatever with Mr. Brent on the subject, except that Mr. Brent asked me *why* I had signed such a paper for, and what Cook had done for me worth that sum; there was no agreement signed for two thousand dollars that I know of; Mr. Brent did not say to me that two thousand dollars was enough; I did not have Mr. Brent called back, and tell him to draw the agreement for three thousand dollars, and not for two thousand; I had no conversation with Mr. Brent on the subject; I never entered into any verbal agreement to pay Mr. Cook two thousand dollars; I did not call Mr. Cook back and tell him to tell Mr. Brent to make the sum three thousand dollars instead of two thousand. The object of Mr. Brent's coming there was to get my mother to sign an agreement as to his fees, and he also brought a paper for me to sign, as to Mr. Mer-
62 rick's fees; I am positive that at that time there was no agreement between Mr. Cook and myself, that I was to pay him two thousand dollars, and that I requested Mr. Brent to insert in the paper the sum of three thousand dollars. I can't state how long before the signing of the paper "A" that Mr. Cook demanded the three thousand dollars for the delivery of the paper he referred to as having in his possession; it was some time before; a month or more; Mr. Cook never demanded of me any sum or sums for his services in the paternity suit; I was a witness on the last trial of the paternity suit, but not on any other; I testified at the instance and persuasion of Mr. Merrick; Mr. Cook had nothing to do with it; Mr. Cook did not urge me to testify.

EMILY F. WILEY.

Subscribed and sworn to before me this 14th day of February, 1868.

M. ASHFORD, *Examiner.*

63 And thereupon the defendant produced as a witness Mrs. ELIZABETH BROWN, who being duly sworn, and of lawful age, deposes and says as follows:

I am the mother of the defendant in this case; the suits upon issue from the orphans court of Brown vs. Wiley were prosecuted and conducted under my direction, and I furnished the means for carrying the suits on. Mr. Cook, the complainant, volunteered his services, as a friend of the family, to do all he could to further the suits, and I accepted his services, and he rendered his services; I paid him for those services, and for all that he did; and he was to attend to my private business until everything was settled up; I paid him three thousand dollars I know of, and I think he had five hundred or six hundred more. I have had a full settlement with him; I paid Mr. Cook in property; I know of no services rendered by Mr. Cook in the suits except what he rendered under his agreement with me.

(Objected to.)

64 Mr. Cook rendered services in getting some notes and bonds, and in collecting evidence, I believe; he was at my house pretty much all the time; he did not sleep there, but *eat* there; I don't know of his having rendered Mrs. Wiley any services in the suits.

(Objected to.)

I could not state all the services that Mr. Cook rendered; it would be

impossible; in the last trial he had little to do. I think that I was present when the paper "A" was signed; I knew that it was for three thousand dollars, but I knew, also, that it was to save $40,000, and that if it had not have been signed we would have been put out of doors; I was induced to think so by the language of Mr. Cook; he said that he held a paper that would be worth $40,000 to him if Marshall Brown gained the suit; it was before the paper was signed that I heard him say this; I think, also, it was after I had settled with him, but
65 I am not sure; he said this to me; I don't remember ever hearing any conversation between Mrs. Wiley and Mr. Cook about that deed.

Cross-examined by Mr. Mattingly:

I do not know that Mr. Cook was mainly instrumental in collecting evidence in these suits. Others besides him were instrumental in doing so. He was frequently at my house, and I frequently sent for him to come and see me in relation to the suits and my other affairs. I signed an agreement with Mr. Brent for his fees on the same occasion that the paper "A" was signed by Mrs. Wiley. I don't remember whether Mrs. Wiley requested Mr. Brent to put three thousand dollars in the paper or not. I don't remember anything that was said by any one at the time. I don't remember whether the paper was prepared by Mr. Brent at the house there or not. I remember that Mr. Brent "chastised" Mrs. Wiley for signing the paper for that sum, and thought it too much. This was after she had signed it.

Reëxamined:

66 I have seen the paper which Mr. Cook delivered to Mrs. Wiley. It was a deed from me to my husband. It used to be in my possession. I don't know how it got into Mr. Cook's hands.

Cross-examined:

Question. Why was that paper executed between you and your husband?

Answer. I decline to answer. I don't remember ever saying to any one that if it had not been for Mr. Cook I would not have a house to shelter me. Can't say whether I ever did or did not.

ELIZABETH BROWN.

Subscribed and sworn to before me this 14th day of February, 1868.

M. ASHFORD,
Examiner.

Adjourned until Wednesday, the 19th day of February, 1868, at 2 o'clock.

M. A.

1868. February 19th. Met pursuant to adjournment, when defendant produced a witness on her behalf, one H. W. Hugley.

67 And the said H. W. HUGLEY being of lawful age, and being duly sworn, deposeth and saith as follows, namely:

I know the parties to this cause. As near as I can remember, about the month of March, 1863, I went into the employment of Mrs. Brown, in the drug store on the corner of Third street and Pa. ave.

(Objected to by Mr. Mattingly.)

Mr. Granville Malcome was then in charge of the store. I frequently

heard conversations between complainant and Mr. Malcome, concerning the Brown and Wiley case, during the first trial. I heard him, in these conversations, say that he had in his possession a paper of great value to whichever party gained the suit, and that if Marshall Brown gained the suit it would be worth $40,000. He said that it would be of equal value to Mrs. Brown if she gained the suit. He also stated to me that his boy was worth $40,000 in consequence of his having this paper, and that he need not work a day for it. He did not state where he got
68 the paper, and I never knew. He stated these things first to Mr. Malcome and afterwards he told me the same. Mr. Cook did not state in what manner he expected to make by this paper, and entered into no details relating to it, and as I was not in any way concerned in Mrs. Brown's private affairs, I asked no explanation about it.

Cross-examined by Mr. Mattingly:

I was not in Mrs. Wiley's employment, but acted as Mrs. Brown's agent in the drug business. At the time of these conversations the complainant was acting as agent for Mrs. Brown and not Mrs. Wiley. The complainant never, in any of these conversations, alluded to any services rendered by him to Mrs. Wiley. The conversations were not confined exclusively to this paper, but had reference also to the suit generally. I know that at one time Mr. Cook had all Mrs. Brown's papers in his possession, and Mrs. Brown told me after she had
69 ascertained the character of the paper in question, that Mr. Cook mentioned to her the fact that he had such a paper when she lived on Third street. I don't remember hearing Mrs. Brown or Mrs. Wiley say that they were indebted to the complainant for everything they possessed.

H. W. HUGLEY.

Subscribed and sworn to before me this 19th day of February, 1868.

M. ASHFORD,
Examiner.

Adjourned until Friday February 21st, at 2 o'clock.

M. A., *Ex'r.*

1868. Feb. 21st. Met pursuant to adjournment, when defendant produced as a witness one J. Harry Thompson, who, being of lawful age and being duly sworn, deposeth and says as follows:

I know the parties to this cause. In 1865 I had frequent business intercourse with them. To the best of my recollection, on one occasion Mr. Cook told me that he had in his possession a paper that
70 would be of great value to Mrs. Wiley. I paid no particular attention to the conversation; but as near as I can remember it was to the purport that the paper was a deed relating to the property now occupied by Mrs. Brown, on 5th street. I don't remember the date of the conversation. It might have been in 1865, or it might have been in 1866.

(All the above objected to by Mr. Mattingly.)

I don't remember that complainant indicated what he purposed doing with the paper. I think that I mentioned the fact to Mrs. Wiley that Mr. Cook had a paper that he was keeping for her, of great value to her.

(Objected to by Mr. Mattingly.)

I knew nothing of the contents of the paper. I only gathered from the conversation that it was of great value, and related to the 5th street property. I was at that time trustee for Mrs. Brown's estate, and that is the way that Mr. Cook came to communicate the fact to me, and the way that I came to communicate the fact to Mrs. Wiley. Mr.
71 Cook communicated it to me as Mrs. Wiley' agent. I was trustee for Mrs. Brown, and a portion of Mrs. Brown's property was to be sold, and Mr. Cook was acting as the agent of Mrs. Wiley in the purchase of this property, and it was in one of the interviews growing out of our relation to the parties and this property that Mr. Cook made the statement to me in relation to the paper. I think that Mr. Cook stated that Mrs. Wiley ought to have the paper, and that he was holding it for her. I am not sure that it was Mrs. Wiley that he stated was interested in the paper, or Mrs. Brown, but it was one or the other. I am sure that I mentioned the fact to Mrs. Wiley; I also told her that I thought the paper was a deed relating to the 5th street property.

Question. When you communicated to Mrs. Wiley the fact of Mr. Cook having this paper, what was her reply?

(Objected to.)

Answer. Her remark was, "Cook be damned. He may light his cigar with the paper. He has always some mare's nest." She further
72 said that if the paper was a deed of the property she was not going to rob her old mother of it. Mr. Cook was not present at the time. I don't know that there were any negotiations between the complainant and Mrs. Wiley, in relation to her getting possession of the paper. Mr. Cook said that the paper was valuable to them (Mrs. Brown and Mrs. Wiley,) or to Marshall Brown.

J. H. THOMPSON.

Sworn to and subscribed before me this 21st day of February, 1868.
M. ASHFORD, *Examiner.*

Adjourned to Wednesday the 26th day of February, 1868, at 3 o'clock.
M. A., *Ex'r.*

1868. February 26th. Met pursuant to adjournment, when A. G. Riddle, esquire, was examined in behalf of the defendant, and the said A. G. Riddle, being of lawful age, and being duly sworn, deposeth and saith as follows, viz:

I know the parties to this suit. I had a conversation with the
73 complainant at his residence in this city, in April or May last, as near as I remember. I was then acting as counsel for Mrs. Brown, and called upon him in that capacity, to secure his evidence in a certain matter then pending between her and Mr. Brent. This led to lengthy conversations in reference to the affairs of Mrs. Brown and Mrs. Wiley, in which he claimed to have taken a large part. He said that Mrs. Wiley was indebted to him largely for services which he had rendered to her about her affairs, and also mentioned in connection with this a certain writing or instrument, the name of which, if any was given me, has escaped me; but it was some paper important for Mrs. Wiley to have, or supposed to be important, which he had procured for her, and for which some compensation was to have been paid him by her. This claim of his against her was then in suit in one of the district courts, as I understood from his conversation, and he seemed desirous to secure a disposition of it favorable to himself. He said
74 that he knew of the facts that I was anxious to establish, and

that he would give his testimony in the matter for Mrs. Brown if Mrs. Wiley would permit him to take judgment or decree for the amount involved in the suit between her and himself, or would adjust it in some way that would secure it to him; and that if she, Mrs. Wiley, would not do that, he would not give his evidence. The conversation consumed an hour or more, in which everything pertaining to Mrs. Brown's and Mrs. Wiley's affairs, were fully talked over by Mr. Cook. My effort to secure his evidence was a failure; not because he did not pretend to know the facts, for he said over and over again that he did, but because he proposed to testify only upon terms wholly inadmissible—terms which I had no power to make, and which I would not have made had I the power. When I referred to the compulsory process of the courts, to secure his evidence, I was again reminded of the only conditions upon which his testimony could be made available. I stated the result
75 of this interview to Mrs. Brown and Mrs. Wiley, but I never again saw Mr. Cook in reference to this matter, nor did I make any further effort to secure his evidence.

A. G. RIDDLE.

Subscribed and sworn to before me this 26th day of February, 1868.
M. ASHFORD, *Examiner.*

And thereupon the defendant produced as a witness one John E. Norris, who, after some hesitation, says that he thinks he is a witness of lawful age, and the said John E. Norris, being duly sworn, deposes and says as follows, viz:

I know the parties to this suit. I was of counsel for Mrs. Wiley in the last trial of the case of Brown vs. Wiley, and was retained in the case a few months previous to the trial. Messrs. Brent, and Merrick, and myself had frequent consultations in relation to the case previous to the trial. I do not recollect of any actual service rendered by Mr. Cook in that
76 trial. He seemed to be very much interested in the case; called to see me frequently in the matter, and spoke encouragingly of the prospects of success. He was also frequently at court during the progress of the trial, and was sworn and examined as a witness for Mrs. Wiley in the case. I don't know of any assistance rendered to me or my colleague by Mr. Cook in the preparation for the last trial of the cause. We had a list of the witnesses and their testimony in the former trials before us. Mr. Cook may have hunted up witnesses for the last trial, but I don't recollect that he did. If he did so I should have known it at the time, but I cannot now recollect it.

Cross-examined by Mr. Mattingly:

I was retained in the case by Mrs. Emily F. Wiley. Mr. Cook first spoke to me about the matter, and said that he had mentioned or suggested my name to Mrs. Brown and Mrs. Wiley as an attorney who might render some aid in the case. At that time I had never
77 seen Mrs. Wiley. Mr. Cook arranged with me for the amount of my fee. I wanted $2,000, and he agreed to give me $1,500, and brought me a bond for that sum, signed by Mrs. Wiley and witnessed by Mr. Brent, which I accepted. I think Mr. Cook took me around and introduced me to Mrs. Wiley before I got the bond. Mr. Cook frequently met me at Mrs. Wiley's in relation to the case.

Reëxamined:

I mean by Mr. Cook's frequently meeting me at Mrs. Wiley's in relation to the case that I called frequently at Mrs. Wiley's, both before and

during the progress of the trial, and found Mr. Cook there. Sometimes I went there in company with him, and we conferred in relation to the force and bearing of certain evidence in the case. I was aware at that time that Mr. Cook had been employed by Mrs. Brown, and that she had made some arrangement to compensate him. Mr. Cook informed
78 me himself that Mrs. Brown was to give him $3,000, and that Mrs. Wiley was to give him the same sum. I understood from Mr. Cook that he had been employed by both Mrs. Brown and Mrs. Wiley, and that each of them had given him a writing to that effect. I cannot say whether this was before or after the trial. I was at that time also counsel for Mrs. Brown.

Cross-examined:

I understood from Mrs. Wiley that she had given the complainant a paper obligating herself to pay him $3,000, but that she ought not to pay it, for the reason that she gave, that she was persuaded to give it under circumstances she ought not to have signed it, and that it was taking advantage of her situation. This statement of Mrs. Wiley was made before the institution of this suit. She has repeated the same in substance since the bringing of the suit.

JOHN E. NORRIS.

Sworn to and subscribed before me this 26th day of February, 1868.

M. ASHFORD, *Examiner.*

79 Adjourned until to-morrow, the 27th inst., at 3 o'clock.

M. ASHFORD, *Ex'r.*

1868. Feb. 27th, 3 o'clock. Met pursuant to adjournment, and adjourned until to-morrow, the 28th inst., at 3 o'clock, no witnesses being in attendance.

M. A., *Ex'r.*

1868. Feb. 28th. Met and adjourned until the 12th day of March, A. D. 1869, at 2 o'clock.

M. ASHFORD, *Examiner.*

80 DISTRICT OF COLUMBIA,
County of Washington, ss:

I, Mahlon Ashford, examiner in chancery, do hereby certify that, in pursuance of due notice, the foregoing depositions were taken down and by me reduced to writing, in the presence of, and from the statement of, the witnesses, at the time and place designated in the caption thereof, and were then and there by me read over to the witnesses, and by them subscribed in my presence, and in presence of the parties and their respective counsel, who were then and there attending, the witnesses having been by me first duly sworn to testify the truth, the whole truth, and nothing but the truth, touching the matters at issue in said cause.

I further certify that I am not of counsel for any of the parties to said cause, or in any manner interested therein.

M. ASHFORD,
Examiner in Chancery.

81 *Exhibit marked "M. A."*

In consideration of services rendered, and to be rendered, by Truman Cook to me, in and about the prosecution of my claims as heir or distributee of my father, Tilloston P. Brown, I hereby agree to pay said Cook three thousand dollars, it being understood that said amount is not to be payable until my said claims are finally decided; and I hereby agree to give said Cook, at his request, a lien on my property for securing said amount.

Witness my hand & seal this 22d August, 1865.

EMILY F. WILEY. [SEAL.]

Witness:
R. J. BRENT.

82 *Order for hearing.—Filed Sept. 28, '69.*

COOK *vs.* WILEY. } 791. Equity docket 8.

Upon the motion of W'm F. Mattingly, esq., it is, this 28th of Sept., 1869, ordered that the above cause be set down for hearing and placed on October calendar.

By the clerk.

Decree for payment of money and reference to the auditor.—Filed Dec. 21, 1869.

In the supreme court of the District of Columbia.

At a special term thereof held this 21st day of December, A. D. 1869, Justice Wylie, presiding—

TRUMAN COOK *vs.* EMILY F. WILEY AND ELIZABETH BROWN. } No. 791. Equity docket 8.

This cause coming on for hearing, being argued by counsel, and duly considered by the court, and it appearing to the court that the
83 said Elizabeth Brown, although duly served with process on the 11th day of October, A. D. 1866, has failed to appear and answer said bill of complaint, it is ordered, adjudged, and decreed that the said bill of complaint be, and the same is hereby, taken for confessed by the said defendant Elizabeth Brown; and it further appearing to the satisfaction of the court that the said defendant Emily F. Wiley executed under seal her said obligation for three thousand dollars, referred to in said bill of complaint, freely and voluntarily, and without being so induced to do by any fraudulent practices of said complainant, but for valuable services rendered her by him; and that said sum of three thousand dollars has by the terms of said sealed obligation become payable, it is further ordered, adjudged, and decreed that the said Emily F. Wiley to pay unto the said Truman Cook the sum of three thousand dollars, with interest from the 11th day of October, A. D. 1866, the
84 filing of said bill of complaint, and that the same be, and hereby is, declared to be a lien on all real estate in the District of Columbia belonging to the said Emily F. Wiley, or in which she has any in-

terest; and further, that this cause be, and hereby is, referred to the auditor of the court to ascertain and report to the court sufficient real estate in the District of Columbia owned by the said Emily F. Wiley, or in which she is interested, to discharge said indebtedness to the complainant by a sale thereof; and he shall also report to the court under what deeds, and how the said Emily F. Wiley holds, and is interested in said real estate, and any other deeds relating to said property as to which, in his judgment, the court should be advised.

By the court.

Appeal to general term.—Filed Jan'y 6, 1870.

The defendants appeal from the decree in this cause made on the 21 day of December, A. D. 1869.

JNO. D. McPHERSON,
For Def'ts.

85 *Appeal bond to gen. term.—Filed Jan'y* 6, 1870.

In the supreme court of the District of Columbia.

TRUMAN A. COOK
vs.
J. STANLEY JONES & EMILY F. JONES. } 791. In equity.

The defendants having appealed to the general term from the decree pronounced against them by the equity court in special term on the 21st day of December, 1869, the said defendants, and Elizabeth Brown, their surety, for themselves, and each of them, their and each of their heirs, executors, and administrators, appear*ing* and submitted to the jurisdiction of the said general term, hereby undertake to abide by, perform, and pay its decree, which they agree may be pronounced against all of them.

J. STANLEY JONES.
EMILY F. JONES.
ELIZABETH BROWN.

Witness to sign. of E. F. Jones—
F. A. DUFFY.

Witness to sign. of E. Brown—
MORRIS CONNOR.

Approved Jan. 6, 1870.

A. B. OLIN.

86 *Report of auditor on defendants' titles.—Filed Jan.* 20, 1870.

TRUMAN COOK
vs.
EMILY F. WILEY & ELIZABETH BROWN. } 791. Eq. doc. 8.

I gave notice of my audit to both the solicitors in this cause, but the complainant was the only person who attended.

The complainant furnished an abstract of the titles of the defendant Emily F. Wiley, and has deposed as to his examination of the records.

I verified the abstract by a personal examination of the records, and, on the result of the whole evidence, report that Mrs. Wiley has an unincumbered title to lots 7, 8, 10, 30, 31, 32, 33, 34, 35, 36, & 37, in square 676, and a title to square 675, and a part of square 527, fronting 49 feet 3 inches on 3d street, and 86 feet on north I street, subject to a deed of trust to secure an indebtedness to R. T. Merrick, which is possibly satisfied, but does not appear of record to have been released.

WALTER S. COX, *Aud'r.*

87 Proceedings before the supreme court of the District of Columbia, in general term, commencing on the third Monday, 18th day of April, 1870.

MONDAY, *April 18th*, 1870.

By order of the chief justice, the opening of the court proclaimed by the marshal.

Present, the chief justice, and Justices Olin and Wylie; Justice Fisher absent, holding the criminal court.

THURSDAY, *May 5th*, 1870.

Session resumed pursuant to adjournment.

Present, Chief Justice Cartter and Justices Olin and Wylie.

TRUMAN COOK
vs.
EMILY F. WILEY & ELIZABETH BROWN. } No. 791. Equity docket 8.

This cause having been heard upon the record of the equity court and argument of counsel on both sides, it is, therefore, ordered, adjudged, and decreed that the decree of the equity court of December 21, 1869, from which this appeal was prosecuted, be, and the
88 same is hereby, in all things affirmed with costs.

WEDNESDAY, *May 11th*, 1870.

Session resumed pursuant to adjournment. Present, Chief Justice Cartter and justices Olin, Fisher, & Wylie.

TRUMAN COOK
vs.
EMILY F. WYLIE ET AL. } 791. Equity doc. 8.

The defendants pray an appeal to Supreme Court of the United States from the decree of this court, made at its present term, May 5, 1870.

And the appeal, as prayed for, is allowed.

89 *Appeal bond to Sup. Court U. S.—Filed May* 14, 1870.

Know all men by these presents, that we, Ja's S. Jones, A. G. Riddle, Frank Trigg, and A. I. Mudd and Tho's J. Phillips are held and firmly bound unto Truman Cook, in the full and just sum of seven thousand dollars lawful money, to be paid to the said Truman Cook, his certain attorney, executors, administrators or assigns, to which payment, well and truly to be made, we hereby bind ourselves, our heirs, executors, and administrators firmly, and by these presents, sealed with our seals, dated this thirteenth day of May, in the year of our Lord eighteen hundred and seventy.

Whereas lately at a general term of the supreme court of the District of Columbia, in a certain case therein depending between the said Truman Cook, complainant, and Emily F. Wiley and Elizabeth Brown, defendants in equity, a decree was rendered against the said defendants to have prayed an appeal to the Supreme Court of the United
90 States to reverse the said decree, and the said appeal has been allowed by the said supreme court of the District of Columbia.

Now the condition of this obligation is such that if the said defendants shall prosecute their said appeal with effect, and shall answer and pay all damages and costs if they shall fail to make their plea good, then this obligation to be void: otherwise to remain in full force, virtue, and effect

JOSEPH S. JONES. [SEAL.]
FRANK TRIGG. [SEAL.]
A. G. RIDDLE. [SEAL.]
A. I. MUDD. [SEAL.]
THO'S J. PHILLIPS.
M. JUDD.

Signed, sealed, & delivered in presence of—
T. A. DUFFY.
J. B. BROWN,
Witnesses to signature of J. S. Jones.
J. E. GEIGER,
T. JOHNSON,
Witnesses to signature of F. Trigg.
T. WILEY,
E. MILLS,
Witnesses to signature of A. I. Mudd.
W'M WATSON,
JOHN JOHNSON,
Witnesses to signature of T. J. Phillips.
Witness as to M. Judd—
R. J. MEIGS, J'R.

DISTRICT OF COLUMBIA, *to wit:*

91 Joseph S. Jones, being sworn, says he is worth the sum of ten thousand dollars free of just liabilities.

JOSEPH S. JONES.

Subscribed & sworn before me, May 14, 1870.

R. J. MEIGS, *Clk.*

DISTRICT OF COLUMBIA, *to wit:*

M. Judd, being sworn, says he is worth the sum of thirty-five hundred dollars free of any just liabilities.

M. JUDD.

Subscribed & sworn to before me, May 14, 1870.

R. J. MEIGS, *Clk.*

1870, May 14. Approved 4.40 p. m.

GEO. P. FISHER,
Jus. S. C. D. C.

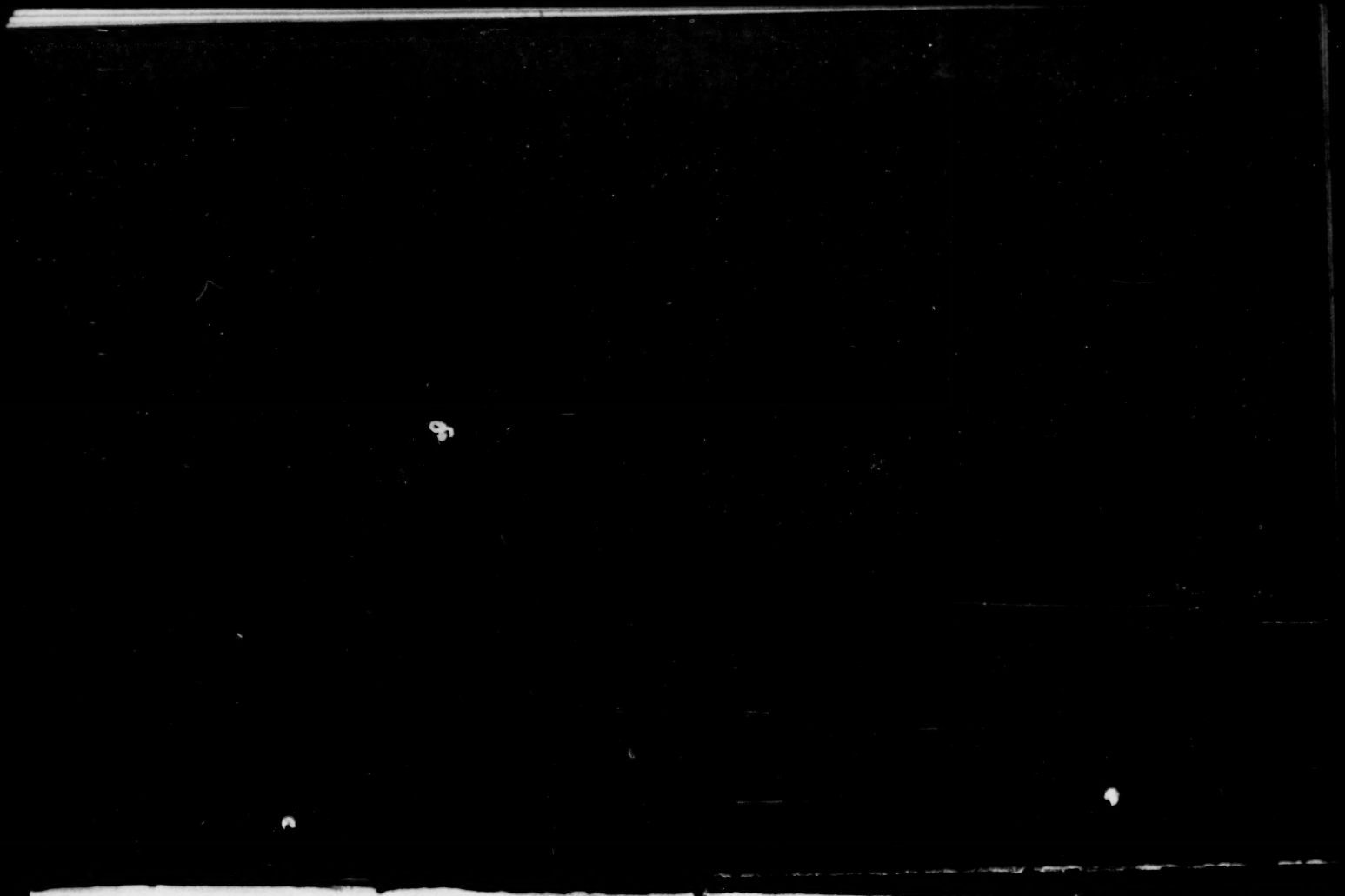
92 DISTRICT OF COLUMBIA, *to wit:*

I, Return J. Meigs, clerk of the supreme court of the District of Columbia, do hereby certify that originals, of which the foregoing writings are true and complete copies, are on file and of record in the clerk's office of said court; and that said originals together constitute the record of the proceedings of said court in a certain cause therein depending and lately decided, entitled Truman Cook vs. Emily F. Wiley and Elizabeth Brown. 791, equity docket 8.

In testimony whereof I hereto subscribe my name and affix the seal of said court this 30th day of November, 1870.

[SEAL.] R. J. MEIGS, *Clerk.*

(Indorsement on cover:) No. 466. Emily F. Wiley and Elizabeth Brown, appellants, vs. Truman Cook. Dist. of Columbia sup. court. Filed 5th January, 1871.



Supreme Court of the United States.

DECEMBER TERM, 1871.

———:-o-:———

EMILY F. WILEY AND ELIZABETH BROWN,
APPELLANTS,

vs.

TRUMAN COOK.

No. 250.

———:-o-:———

BRIEF FOR APPELLANTS.

This cause comes up by appeal from the Supreme Court of the District of Columbia.

The Pleadings.

The bill was filed by the appellee. It alleged that the defendant, Wiley, had made a contract to the complainant, which is exhibited, whereby she agreed to pay him $3,000 for services rendered, and to be rendered by complainant, in and about the prosecution of her claim as heir or distributee of her father, T. P. Brown, but the amount was not to be payable till the said claims should be finally decided. And she further agreed to give said Cook, at his request, a lien on her property for securing said amount. The bill averred that there had been secured an adjudication establishing a large part, if not all, the claims and right in the contract specified. The bill proceed to state that the complainant had demanded a deed of trust from defendant in execution of the covenant

in said contract, and that she failed and refused to execute the same.

The prayer of the bill was that the said defendant "be decreed to perform said contract specifically, and may execute a deed of trust upon all the right, claims and property of the said Emily F. Wiley, in said contract mentioned, to secure the faithful performance of said contract, and that she may be enjoined from selling and disposing of any property, right or claim in said contract referred to, until the payment of your orator's said claim under the same," and for further relief. Rec., p. 1.

Mrs. Brown was made a party because she held the legal title to certain of Mrs. Wiley's real estate.

The answer and amended answer, (Rec., pp. 6, 9,) admitted the execution of the contract set forth in the bill, but averred that the complainant had acted fraudulently in his employment, and that she had discharged him, and he had acquiesced in the termination of his employment. It further averred that the execution of the contract had been obtained by fraud and imposition, but admitted that some services had been rendered by complainant for which she was willing to pay *quantum meruit*.

The decree, (Rec., p. 24,) recites that it appeared to the satisfaction of this court that the contract was voluntarily executed without fraud, but for valuable services rendered, and that the sum of $3,000 had, under the terms of the agreement, become payable, and decrees that the said Emily F. Wiley pay unto the said Truman Cook the sum of $3,000, with interest, from the 11th of October, A. D. 1866, the filing of the bill of complaint, but (without allowing any time for the payment,) declares the same to be a lien on all real estate in the District of Columbia belonging to the said E. F. Wiley, or in which she has any interest; and it referred the cause to the auditor to ascertain and report sufficient real estate in the District of Columbia, owned by said Wiley, to be sold to discharge said debt.

Assignment of Error.

1. The court erred in making a decree for the payment of money.

2. The court erred in decreeing the said sum so decreed to be paid, to be a lien on all the real estate of the defendant in the District of Columbia.

I.

The bill does not aver in terms, that the compensation fixed by the contract had become payable; does not aver that the services agreed for had been fully rendered; does not aver that the contingency upon which the payment was to be made had happened, and asks no decree for payment of the money.

The bill simply makes a case for, and asks for the specific performance of the covenant for a deed of trust, and such relief as will render that decree effectual, viz: injunction against defendants disposing of any property. The apparent object of the bill, was to obtain security for compensation yet to be earned, and the payment of which, after being earned, might be postponed to a future time. The bill contains no allegations putting in issue the facts, that the compensation had been earned, and that it had also become payable.

"No rule is better settled than that the decree must conform to the allegations, as well as to the proof in the cause." Crockett *vs.* Lee, 7 Wheat., 522, 525.

"The maxim that the decree must be sustained by the allegations of the parties, as well as by the proofs in the cause, is too well established to be disregarded." Carneal *vs.* Banks, 10 Wh., 181, 189.

The allegations amounted to but this, that the complainant had rendered *some* service, and that a *part* of the defendant's claims had been secured.

The answer, while admitting that the complainant had

rendered *some* service, repudiated the contract for specific compensation, and expressed a willingness to pay *quantum meruit*, but this both the court and the complainant ignore, and proceed on the case made by the bill.

No bill could have been filed to obtain the decree that was made. There would have been no pretence for going into equity for a money decree, and to have the payment of that decree provided for by a sale of the defendant's real estate, and this is what the decree does.

II.

The second part of the decree is liable to the same objection. No such provision is contained in the contract which is made part of the bill, and even under the prayer for general relief, the court could do what, in effect, it does, make a new contract for the parties. The defendant, if the plaintiff should prevail, was entitled to give only the security stipulated for, that is to say, to specifically perform her contract, not to do something else, or indeed to have something else done by some other person.

The case was one in which the defendant was entitled to trial by jury upon the issues, whether the complainant had performed his part of the contract, and whether the time for payment had arrived. It is contrary to the policy of the law, which keeps the common law and equity jurisdictions separate, for the complainant to obtain a decree which defeats the complainant's right to such trial, without even by the bill putting those questions in issue.

Conclusion.

We submit that the decree should be reversed and the cause remanded.

A. G. RIDDLE,
J. D. McPHERSON,
Attorneys for Appellant.

Supreme Court of the United States.

DECEMBER TERM, 1871—No. 250.

EMILY F. WILEY AND ELIZABETH BROWN,
APPELLANTS,

vs.

TRUMAN COOK.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

BRIEF FOR APPELLEE.

Judd & Detweiler, Printers.

Supreme Court of the United States.

DECEMBER TERM, 1871—No. 250.

EMILY F. WILEY AND ELIZABETH BROWN,
APPELLANTS,

vs.

TRUMAN COOK.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

BRIEF OF APPELLEE.

The bill in this cause was filed by Truman Cook, appellee, (complainant in the court below,) to enforce the following agreement under seal, viz:

"In consideration of services rendered and to be rendered "by Truman Cook to me, in and about the prosecution of "my claim as heir or distributee of my father, Tillotson P. "Brown, I hereby agree to pay said Cook three thousand "dollars, it being understood that said amount is not to be "payable until my said claims are finally decided. And I "hereby agree to give said Cook, at his request, a lien on "my property for securing said amount.

"Witness my hand and seal, this 22d August, 1865.

"EMILY F. WILEY. [SEAL.]

"Witness: R. J. BRENT."

This agreement is filed with the bill as "Exhibit A," and is made part thereof.

The bill avers that the said Emily F. Wiley conveyed to the defendant, Elizabeth Brown, in fee-simple, (Exhibit B, Record, page 2,) a portion of the property referred to in Exhibit A, and that the said Elizabeth Brown executed a declaration of trust relative to said conveyance in fee, (Exhibit D, Record, page 4,) the effect of which was to vest the fee-simple title to said property in the said Emily F. Wiley. That an adjudication had been secured establishing a large part, if not all, of the claims and rights specified in said contract. That he demanded of the said Emily F. Wiley a deed of trust in execution of said agreement, which, although professing a willingness to do, she failed to execute.

The bill prays that the said Emily F. Wiley *may be decreed to perform said contract specifically*, and to execute a deed of trust upon the property referred to in said contract to secure the faithful performance of the same; that she may be enjoined from selling any of said property *until the payment* of said claim, and for general relief.

No answer was filed by Elizabeth Brown, and the bill as to her was taken as confessed.

The first answer of Emily F. Wiley was filed December 4, 1866, her solicitor at that time being R. T. Merrick, Esq. (Record, pages 6 and 7.) In this answer she admits the execution by her of Exhibit A, but avers that she discovered that the complainant was defrauding her, and that she was compelled to discharge him; that her rights as heir and distributee of the estate of said Tillotson P. Brown had not been finally determined; that Cook had neither offered nor rendered any services for several months past, and had acquiesced in his discharge.

This answer further sets up that she had employed the complainant to purchase certain real estate for her, which he had done for the sum of upwards of $21,000, when he knew it was not worth more than $12,000, and that by reason of this fraud he was not entitled to recover.

This defence was abandoned in the proof.

On the 20th January, 1868, Emily F. Wiley having employed other counsel, (John D. McPherson, Esq.,) filed by leave of court, an amended answer, in which she sets up a new and totally different defence, viz: that Cook pretended to have in his possession a deed of great importance to her, and threatened to use the same to her injury unless she purchased his forbearance, and that moved by his threats and yielding to her fears, she executed the said "Exhibit A" in order to purchase his forbearance in the matter of said deed; and that that was the true consideration therefor; and that if she had known the true character of said documents she would not have signed said contract. (Record, page 9.)

The testimony on both sides shows that Cook rendered Mrs. Wiley valuable services in the preparation and prosecution of the suit to establish her legitimacy and her claim as heir to a valuable estate, and that largely, through his instrumentality, she did recover property worth about $180,000.

The testimony of one of her own witnesses shows what effect Cook's having this deed had upon her mind. (J. H. Thompson's Dep., Record, p. 21.)

Question. When you communicated to Mrs. Wiley the fact of Mr. Cook having this paper, what was her reply?

Ans. Her remark was, "Cook be damned; he may light his cigar with the paper; he has always some mare's nest."

The late Robert J. Brent witnessed the execution of the contract in this case. He was the principal counsel of Mrs. Brown and Mrs. Wiley in Mrs. Wiley's suit against Marshal Brown. As his testimony in this case is not long, we print it here in full.

Testimony of Robert J. Brent.

"Being shown by the complainant the paper dated 22d August, 1865, signed by Emily F. Wiley, and being asked to state his recollection of the ceremonies attending the execution of said paper, the witness states: To the best of my

recollection, I was called on by Mr. Cook, at the office of Messrs. Brent & Merrick, and requested to prepare two agreements, to be executed by Mrs. Emily F. Wiley and Mrs. Elizabeth Brown, respectively. I prepared the paper now shown me, marked "Exhibit M. A," and also another paper now shown me, marked "Exhibit M. A., No. 2," and I proceeded with Mr. Cook to Mrs. Brown's house, on Fifth street, and found Mrs. Brown and Mrs. Wiley there, and I was very particular in reading and explaining each of the said papers to the respective parties. I recollect distinctly that Mrs. Wiley said to me promptly that the paper was all right, and she had no hesitation in signing it; that, as far as I could, I cautioned Mrs. Brown against signing the paper on her part, as I told her that, perhaps, it was a high compensation. This I said in presence of Mr. Cook, and it caused some feeling. Both Mrs. Brown and Mrs. Wiley seeming to be, from their manner, displeased at my suggestions. Considering them both competent to manage their own affairs, and Mrs. Wiley particularly intelligent and decided in the matter, I relinquished all further opposition, when they signed the papers, respectively, as they purported to be signed, and I witnessed them. The reason why I more particularly cautioned Mrs. Brown was that Mrs. Wiley had said that as my contract in the case was with her mother, she regarded me as her mother's counsel, and had, or was to engage Mr. Merrick as her counsel.

"I well know of the attention of Mr. Cook to the affairs growing out of the administration of Tillotson P. Brown's estate, and consider that Mr. Cook rendered important services in the matter; and, further, that I considered, and for that reason mentioned to Mrs. Brown that she ought not to pay as much as Mrs. Wiley, as the principal benefit of the suits and administration in the event of success was to be in favor of Mrs. Wiley. Mr. Cook came to Baltimore and made the contract with me, and paid me my retaining fee ($500) in the case Wiley *vs.* Brown, and rendered constant,

zealous, and faithful services in the preparation and management of said cause, bringing witnesses for examination by the counsel. I don't hesitate to say, from my knowledge of his services, that $6,000 would not be too much for Mrs. Wiley to pay, considering the full amount I understand she has realized by that suit, and which is much greater than I supposed it would be at the time of those agreements. The claim of Mrs. Wiley referred to in said agreement has been finally decided in her favor by the judgment in the Orphans' Court, rendered on the verdict, prior to the filing of the bill in this cause.

"ROBERT J. BRENT."

The court, on final hearing, after argument, passed a final decree *pro confesso* against Elizabeth Brown, and reciting in the decree that "it further appearing to the satisfaction of the court that the said defendant, Emily F. Wiley, executed under seal her said obligation for three thousand dollars, referred to in said bill of complaint, freely and voluntarily, and without being so induced to do by any fraudulent practices of said complainant, but for valuable services rendered her by him," proceeded to decree the payment of said sum of $3,000, and adjudged the sum to be a lien on all real estate in the District of Columbia, belonging to the said Emily F. Wiley, and referred the cause to the auditor of the court, to ascertain and report sufficient real estate in the District of Columbia, owned by Emily F. Wiley to discharge said indebtedness to the complainant by a sale thereof. From this decree Emily F. Wiley appealed to this court.

Points.

1st. The only issue involved was one of fact. This was decided adversely to the appellant by the court below, it being familiar with the previous trials of Wiley *vs.* Brown referred to in the testimony, and having full knowledge of the several witnesses, and of the credibility to be attached to their testimony.

This court has repeatedly decided that in such cases it will not reverse the decision below.

2d. Was the decree justified by the pleadings?

The contract ("Exhibit A") is made part of the bill. Emily F. Wiley in this contract agrees to pay Cook the sum of $3,000 on the final decision of her claims as heir and distributee of the estate of Tillotson P. Brown, and to give a lien on her property to secure the amount.

The bill avers that this decision had been made, and prays that *the contract may be specifically performed,* and a deed of trust executed by Emily F. Wiley; and that she may be enjoined from selling any of her property until the payment of the complainant's said claim. This is clearly equivalent to a specific prayer for the payment of the money. It is susceptible of no other construction, and is the basis of the decree below for the payment of the money.

3d. Under the prayer for general relief alone the decree is in proper form.

Story's Eq. Pl. Sec., 41, 42.

4th. It is respectfully suggested to the court that the appeal in this cause was manifestly taken merely for delay, and that ten per cent. damages upon the amount of the decree should be awarded the appellee under Rule 23 of this court.

WM. F. MATTINGLY,
Solicitor for Appellee.

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~460.~~ 252

E. P. HUNT, PLAINTIFF IN ERROR,

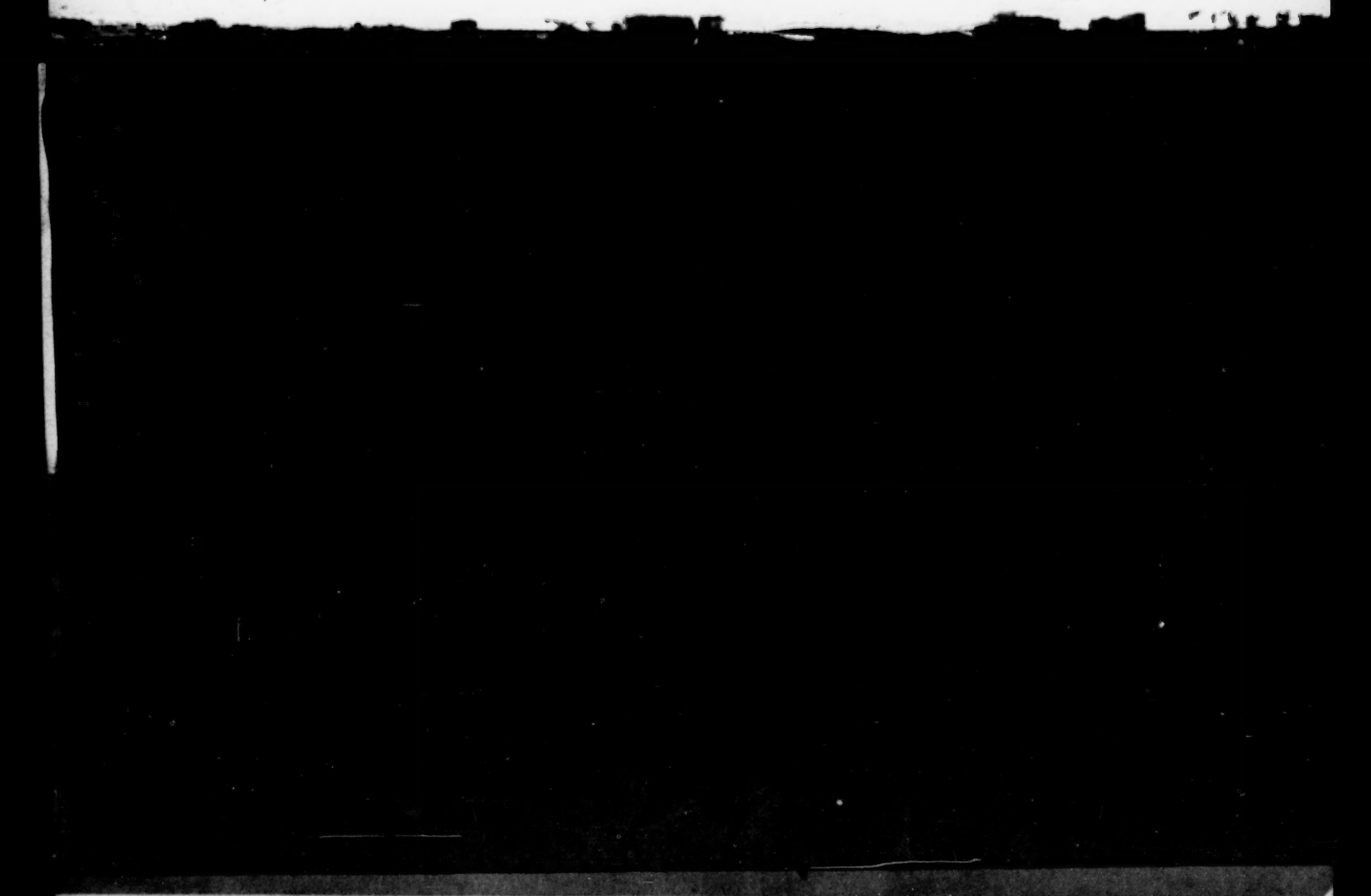
vs.

ALEXANDER STODDART.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF TEXAS.

FILED JANUARY 6, 1871.

Dec. 1871



SUPREME COURT OF THE UNITED STATES.

No. 469.

E. P. HUNT, PLAINTIFF IN ERROR,

vs.

ALEXANDER STODDART.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF TEXAS.

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1 THE UNITED STATES OF AMERICA,
Circuit Court of the United States,
Eastern District of Texas, to wit:

At a term of the circuit court of the United States begun and held at the city of Galveston, in and for the eastern district of Texas on the first Monday of the month of May, in the year of our Lord one thousand eight hundred and seventy, to wit, on the twenty-third day of said month and year, it being a day of said term, present, the Honorable Joseph P. Bradley, judge of said court, J. C. C. Winch, esq'r., district attorney, W'm E. Parker, esq'r., marshal, and Levi Jones, esq'r., clerk: Among other proceedings were the following, that is to say:

ALEXANDER STODDART, PLAINTIFF,
vs.
ELEAZER P. HUNT, DEFENDANT.

Be it remembered that, heretofore, to wit, on the 17th day of August, A. D. 1868, came the said plaintiff and filed a petition herein, which is in the words and figures following, to wit:

2 *Petition.—Filed August 17th*, 1868.

UNITED STATES OF AMERICA,
Eastern District of Texas, ss:

Circuit court, December term, 1868.

The petition of Alexander Stoddart, who is a citizen of the State of New York, respectfully complains of E. P. Hunt, who is a citizen of the State of Texas, and resides in the eastern district thereof:

For that the said Alexander Stoddart, on the tenth day of June, one thousand eight hundred and sixty-eight, was the legal owner & entitled to the possession of the following-described property, to wit: All that certain two lots or parcels of land lying & being in the city & county of Galveston, State of Texas, and known, designated, and described on the map or plan of the Galveston City Company as lots number (8 & 9,) eight and nine, in block number (497,) four hundred and ninety-seven, together with the dwelling-house & improvements situate thereupon; and the said Stoddart being such owner and entitled to the possession of the same, the said E. P Hunt afterwards, to wit, on the eleventh

3 day of June, one thousand eight hundred & sixty-eight, entered into said premises and unjustly withholds from the said Stoddart the possession thereof; and the petitioner avers that the rents and mesne profits of the said parcels of land, and the use and occupation of the same, & the dwelling-house & improvements is worth three hundred dollars per month, for which amount the said Hunt is indebted to your petitioner, and, tho' often requested, has refused to pay.

And your petitioner prays that the said Hunt may be summoned to answer this petition, & that judgment be rendered against him for damages for the mesne profits as well as for the recovery of the said parcels of land, and that your petitioner be adjudged a writ of possession for the land, and an execution for his damages, &c.

And he will ever pray.

T. N. WAUL,
For Pet'r.

The following indorsement appears on the back of the foregoing petition, to wit:

"This action is brought as well to try the title as for damages."

T. N. WAUL,
Plaintiff's Att'y.

4 *Citation.—Issued Sept. 23d, 1868.*

United States circuit court.

The President of the United States of America to the marshal of the eastern district of Texas, greeting:

You are hereby commanded to summon E. P. Hunt, if he be found in your district, to be and appear before the honorable circuit court of the United States, at the next term thereof, to be holden for the fifth judicial circuit, at the court-house thereof, in the city of Galveston, on Monday, the seventh day of December next, to answer the petition of Alexander Stoddart against him in an action of debt, to try title & for damages, of which you will serve the said defendant with the accompanying copy of said petition. Herein fail not, and due return of this writ make.

Witness the Honorable Salmon P. Chase, Chief Justice of the Supreme Court of the United States, and the seal of the circuit court thereof, at Galveston, this 23d day of Sept., in the year of our Lord eighteen hundred and sixty-eight, and of American independence the ninety-third year.

5 [SEAL.]

LEVI JONES,
Clerk Eastern District Texas, at Galveston.

Marshal's return.

Rec'd, Sept. 23d, 1868, and on the 24th day of Sept., 1868, I delivered in person to E. P. Hunt, a true copy of this writ, and a certified copy of the petition.

J. J. BYRNE, *U. S. M.*,
By M. K. CANFIELD, *Dep'ty.*

Answer.—Filed Dec'r 11th, 1868.

In United States circuit court, eastern district of Texas, at Galveston.

A. STODDART
v. } L. No.
E. P. HUNT.

And now comes the defendant, by his attorney, and for answer says that the plaintiff's petition is insufficient in law, and that, for anything therein contained, the plaintiff is not entitled to have and recover as prayed for in said petition, wherefore the defendant prays judgment, etc., etc.

And for further answer said defendant denies all & singular the averments in said petition contained, and puts himself on the country for trial.

E. P. HUNT,
P'r PHILIP C. TUCKER,
Attorney.

6 *Leave to amend.—From the minutes Dec'r term*, 1868, *Jan'y 9th* 1869.

A. STODDART
v.
E. P. HUNT. } 283.

On motion of P. C. Tucker, counsel for the defendant, he has leave to file an amended answer.

Amended answer.—Filed Jan'y 9th, 1869.

ALEXANDER STODDART
vs.
E. P. HUNT. } 283.

And now comes the defendant, and by leave of the court for that purpose first had and obtained, files this his amended answer in the above-entitled case, and for answer says that he is the lawful owner of the lots numbered eight (8) and nine (9) in block numbered (497) four hundred and ninety-seven, in the city of Galveston, sued for by plaintiff; that the same at the dates mentioned was, for a long time had been, and now is, the homestead of this defendant, his wife and family, and for several years past has been occupied as such by himself and family, and, as such, then was, and now is, by the laws of Texas, exempt from forced sale, or from sale under any pretended deed of mortgage or deed of trust
7 whatever; that the plaintiff well knew the same when he attempted to purchase the same, at the pretended sale thereof, under a certain deed of trust, in the month of June, A. D. 1868, and had actual notice given him that such property was the homestead of defendant and his family, and claimed by them as such; that said pretended sale was in violation of the rights of defendant and the law, and would be resisted to the extent of the law, to wit, on the 6th day of June, A. D. 1868. And this the defendant is ready to verify; wherefore he says the plaintiff ought not to have and recover said lots and improvements, as prayed for in his petition; and of this he puts himself on the country for trial.

And for further answer this defendant says that the plaintiff herein is the treasurer or financial agent of a body called the New York underwriter's agency; that said underwriter's agency, or treasurer, is the actual party plaintiff in this case; that this case is being prosecuted for the benefit of said underwriters; that defendant has a just and meritorious defence to the notes held by said underwriters and its
8 agent or treasurer, but that they, combining with the plaintiff and one James Sorley, one of its agents, conspired to sell the premises by virtue of a deed of trust given to insure the payment of certain notes given on account, and against which defendant sought to have applied certain judgments thereon made ,went thro' the form of a pretended sale of said lots and pretended to sell them to plaintiff, who is in fact for the purposes of this case said underwriters; that said sale was and is void; and, if said Stoddard, or said underwriters *has* any lien thereon or claim thereto, it is subject to all equities and defences originally existing between this defendant and said underwriters. Wherefore he says that the plaintiff is justly indebted in the sum of twenty thousand dollars for certain goods, wares, & merchandize, ship tackle, apparel, & rigging, boats, furniture, etc., sold and delivered to said underwriters on or before the 1st day of January, A. D. 1867, and

which they then & there assumed and promised to pay to defend-
9 ant; which amount is due and unpaid. Wherefore defendant re-convenes upon plaintiff therefor and prays judgment, etc.

P'r PHILIP C. TUCKER, *Att'y.*

Plea of not guilty.—Filed Jan'y 9th, 1869.

In U. S. C. C.

ALEX. STODDART
vs. } 238.
E. P. HUNT.

And now comes the defendant and for answer says that he is not guilty in any manner & form, as in plaintiff's petition alleged against him; and of this he puts himself on the country for trial.

P'r PHILIP C. TUCKER, *Att'y.*

Subpœna.—Issued January 9th, 1869.

The President of the United States of America to the marshal of the eastern district of Texas, greeting:

You are hereby commanded to summon W'm McCarty to be and appear before the honorable circuit court of the United States for the eastern district of Texas, at the court-house, in the city of Galveston, forthwith—1869—to testify in behalf of def't in a cause now
10 pending in said court entitled A. Stoddard v. E. P. Hunt, and not to depart the court without leave of the court or district attorney. Herein fail not.

Witness the Honorable John C. Watrous, judge of the district court of the United States, and seal thereof, at city of Galveston, this 9th day of Jan'y, in the year of our Lord one thousand eight hundred and sixty-nine.

[SEAL.]

LEVI JONES,
Clerk Eastern District Texas, at Galveston.

Marshal's ret'n.

Rec'd Jan'y 9th, 1869, and executed on the same day.

J. J. BYRNE, *U. S. M.*
By M. K. CANFIELD, *Dep't.*

Pl'ff's exceptions to answer.—Filed Jan'y 18th, 1869.

ALEX'R STODDART
vs. } 283.
E. P. HUNT.

And, as to the first amended answer of def't, your petitioner says the matters and things in said answer contained, as the same are therein set forth, are not sufficient in law to bar or preclude your petitioner from recovery of said def't, and for special exceptions thereto he says
11 that def't has not in said answer set forth the value of said lots and improvements thereon.

That def't neither admits or denies the execution of said mortgage or trust deed set up in said answer.

That def't does not set forth the time said lots & improvements were designated as a homestead, and their value when so designated by him.

That said ans'r is in other respects argumentative, informal, & insufficient.

WAUL, *For Pet.*

Order.—From the minutes, May term, July 6, 1869.

A. STODDART } v. } 283.
E. P. HUNT. }

Continued.

Order.—From the minutes, Dec'r term, Dec'r 7th, 1869.

A. STODDART } v. } 283.
E. P. HUNT. }

Continued.

Plea of intervention of S. M. Hunt.—Filed May 9th, 1870.

In the circuit court of the United States in and for the east'n dist. of Texas.

ALEXANDER STODDARD } v. }
E. P. T. }

The plea in intervention of Sophia M. Hunt respectfully rep-
12 resents that she is a resident of the city and county of Galveston, and State of Texas, and that, on the first day of January, A. D. eighteen hundred and sixty-six, and for many years previous thereto and up to the present time, she was, has been, and is, the wife of the said E. P. Hunt, the defendant in the above entitled cause; that, on said 1st day of January, A. D. 1866, the said defendant did own and possess the premises described in said plaintiff's petition, having purchased the same with the proceeds of a sale of their former homestead, and did on said day designate and adopt the same as his and her homestead, and that the same have ever since been in law and in fact the homestead of your intervenor and her said husband, and used, possessed, and occupied as such by them; and your intervenor is informed and believes, and therefore so alleges, that the lots described and sued for in said plaintiff's petition, and constituting in part the homestead of your petitioner, were at the time of said designation and adoption as aforesaid, and still are city lots, and at said time did not exceed two thousand dollars in value.

13 And your said intervenor further represents that heretofore, to wit, on or about the twenty-ninth day of November, A. D. eighteen hundred and sixty-six, her said husband, the defendant herein, did present *present* to your intervenor a certain instrument in writing, and requested and directed her to sign the same, and read the said instrument to her, and told her that it was a mortgage on their said home-

stead to secure the payment of certain notes executed by him, and assured her that the said notes would be paid when due, and that in no event would the said homestead be sold under said instrument. And your intervenor avers that she did at first refuse to sign the said instrument, but that afterwards, fearing the displeasure of her said husband, and being induced by his repeated and positive assurances as aforesaid, she did reluctantly and unwillingly sign the same; that a very short time thereafter, viz, within the period of about fifteen minutes, Oscar Farish, then being the clerk of the county court of said county, called on your intervenor and holding in his hand some instrument in
14 writing, said to your intervenor that he supposed she knew what the said instrument was and that she had signed the same voluntarily, to which your intervenor, presuming that the said instrument in writing so held by him, was the same then recently signed by her as aforesaid, replied that she supposed the said instrument was a mortgage on her home, and that she had not signed it voluntarily, but that her husband had made her sign it; that she had done so very unwillingly, and was then very angry about it. And your intervenor avers the said Farish did not read or explain the said instrument to her, and that she did not then know beyond her supposition as aforesaid, and does not yet know whether the said instrument then held by him as aforesaid, was the one signed by her or not; that the said Farish did not ask her any questions in regard to said instrument or examined her in relation thereto except as aforesaid, and that she did not then or at any time declare or acknowledge that she had signed the said instrument freely and willingly and did not wish to retract it, but did
15 then expressly and positively declare to said Farish as aforesaid, that her husband had made her sign it, and that she had signed it unwillingly. And your intervenor further says that she has never seen the said instrument since the day last aforesaid, but she is informed & believes, and therefore avers, that since the time last aforesaid, the said Farish, in his capacity of clerk of the county court of said county, has certified in substance that your intervenor had personally appeared before him, and having been examined by him privily and apart from her husband, and having the said instrument fully explained to her, had acknowledged the same to be her act and deed, and declared that she had willingly signed, sealed, and delivered the same, and that she wished not to retract it. And your said intervenor avers that the said certificate is false in fact and in fraud of her rights to the enjoyment of her homestead, secured by the constitution of said State.

And your intervenor further says that, on or about the tenth day of June, A. D. eighteen hundred and sixty-eight, under the pre-
16 tence that the said instrument, so unwillingly signed and fraudulently certified as aforesaid, was a good and valid lien on the said premises, one James Sorley, claiming and pretending to be thereto authorized by said pretended instrument and by some pretended authority and appointment from said Oscar Farish, did attempt to make a sale of the said premises to the said plaintiff in this suit, and did execute and deliver a deed purporting to convey the same to said plaintiff, and that said plaintiff now claims the said premises and sues for the recovery of the same by virtue of the pretended title attempted to be conveyed to him by said Sorley as aforesaid.

And your intervenor avers that, at the time of the signing of the said instrument by her as aforesaid, the said premises were in law and in fact the homestead of her said husband and herself, and could not be lawfully encumbered by mortgage, deed of trust, or otherwise; that

your intervenor did not, by signing the said instrument as aforesaid, or by her declarations and acknowledgments to said Farish on the
17 occasion aforesaid, or at any time give her consent to the alienation of her said homestead in the manner pointed out by law; and that the said conveyance by said Sorley to said plaintiff, and under which said plaintiff now claims, was, and is unauthorized by law, and of no effect, and has not divested, impaired, or in anywise affected the rights of your intervenor to the full and undisturbed enjoyment of her said homestead, as secured to her by the constitution and laws of this State.

Wherefore the said Sophia M. Hunt prays the court to be allowed to intervene in her own name and behalf in this suit, and to assert and prove her interest and rights in the premises, and that the said court will make such judgment and decree herein as will fully protect her in the enjoyment of all her rights and interests as aforesaid, and will grant her all such other and further relief as she may be entitled to in law.

J. W. HARRIS & GEO. MASON,
Atty's for S. M. Hunt, Intervenor.

9 MAY, '70.

18 *Leave to pl'ff to amend.—From the minutes, May term, May 10th, 1870.*

ALEXANDER STODDART
v. } 283.
E. P. HUNT.

On motion of plaintiff's attorney, he has leave to amend his pleadings.

Amended petition.—Filed May 10th, 1870.

Circuit court U. S., eastern district of Texas.

ALEX'R STODDART
v. } 283.
E. P. HUNT.

And the said petitioner, by leave of the court first had & obtained, amends his petition, and says that the said E. P. Hunt had used & occupied, from the time of the filing said petition, to wit, 17th day of August, 1868, the said premises, to the damage of petitioner, in the sum of five thousand dollars, for which he prays the judgment of the court.

T. N. WAUL,
For Petitioner.

Order.—From the minutes, May term, May 10th, 1870.

ALEXANDER STODDART
v. } 283.
E. P. HUNT.

This day came Hunt, the wife of the defendant herein, by
19 her attorneys, and moved the court for leave to be admitted as an intervenor in this suit; and, after hearing arguments of counsel, and the court being fully advised, it is considered by the court that the said motion be sustained.

Whereupon the plaintiff, by his attorney, asked leave to amend, and amendment filed, and the cause set for hearing on Tuesday the 17th instant.

Amended petition.—Filed May 10th, 1870.

ALEX'R STODDART
vs. } 283.
E. P. HUNT.

And the petitioner, by leave of the court, first had and obtained, amends his petition, heretofore filed, and makes Sophia M. Hunt a party def't to said petition, and asks that she be required to answer all the allegations in said petition contained, & that judgment be rendered against her according to the prayer of said petition, as tho' she was an original party thereto. & your petitioner will ever pray, &c.

T. N. WAUL, *P. Pet.*

20 *Subpœna.—Issued May 10th, 1870.*

The President of the United States of America to the marshal of the eastern district of Texas, greeting:

You are hereby commanded to summon Oscar Farish & James Sorley to be and appear before the honorable circuit court of the United States for the eastern district of Texas, at the court-house, in the city of Galveston, on the 10th day of May, A. D. 1870, at 10 a. m., to testify in behalf of p't'ff, in a suit now pending in said court, entitled A. Stoddart v. E. P. Hunt. Herein fail not.

Witness the Honorable Salmon P. Chase, Chief Justice of the Supreme Court of the United States, and seal of the said circuit court, at the city of Galveston, this 10th day of May, in the year of our Lord one thousand eight hundred and seventy.

[SEAL.]

LEVI JONES,
Clerk Eastern District Texas, at Galveston.

Marshal's return.

Rec'd this writ May 10th, 1870, and executed the same by summonsing the within-named parties on the same day, month, and year.

W'M E. PARKER,
21 *U. S. M. E. D. T.*
By H. S. ALLEN, *Deputy.*

Subpœna.—Issued May 19th, 1870.

The President of the United States of America to the marshal of the eastern district of Texas, greeting:

You are hereby commanded to summon James Sorley and Oscar Farish to be and appear before the honorable circuit court of the United States for the eastern district of Texas, at the court-house, in the city of Galveston, on the 20th day of May, 1870, at 10 a. m., to testify in behalf of plaintiff in a cause now pending in said court, entitled A. Stoddart v. E. P. Hunt. Herein fail not.

Witness the Honorable Salmon P. Chase, Chief Justice of the Supreme Court of the United States, and seal of the said circuit court, at the city

of Galveston, this 19th day of May, in the year of our Lord one thousand eight hundred and seventy.

[SEAL.] LEVI JONES,
Clerk Eastern District Texas, at Galveston.

22 *Marshal's return.*

Rec'd May 19th, 1870, and executed the 20th day of May, 1870, by reading this writ to the within-named parties.

W'M E. PARKER,
U. S. M. E. D. T.
By H. S. ALLEN, *Deputy.*

Demurrer to plea of intervention.—Filed May 20th, 1870.

STODDART
v.
E. P. HUNT.

And the petitioner comes and says that the matters and things set forth in the intervention heretofore filed by Mrs. Sophia M. Hunt as the same are therein set forth are not sufficient in law for her to recover by virtue of said intervention, which he is ready to verify.

T. N. WAUL,
For Petitioner.

Copy deed V. B. Poole to Eleazer P. Hunt.—Filed May 20th, 1870.

[$8 00 U. S. rev. st.

THE STATE OF TEXAS:

Know all men by these presents that I, Valentine B. Poole, of Galveston County, for the consideration of eight thousand dollars, to me paid by Eleazer P. Hunt, of Galveston County, have granted, bargained, sold, and released, and do hereby grant, bargain, sell, and release
23 unto the said Eleazer P. Hunt, his heirs and assigns, forever, the following-described property, to wit:

All those two certain lots or parcels of land lying and being in the city and county of Galveston, and State of Texas, and known, designated, and described on the map or plan of the Galveston City Company as lots Nos. (8 & 9) eight and nine, in block number (497) four hundred and ninety-seven, together with the two-story dwelling-house, out-houses, and improvements situated thereupon, together with all and singular the rights and appurtenances to the same belonging, or in any wise appertaining:

To have and to hold, all and singular, the above-described premises unto the said Eleazer P. Hunt, his heirs and assigns forever.

And I do hereby covenant and agree to and with the said Eleazer P. Hunt, his heirs, administrators, and assigns, that I have good right and lawful authority to sell and convey said property, and that it is free and clear of all encumbrance, and that I warrant and will forever defend the same unto the said Eleazer P. Hunt, his heirs, executors, administrators, and assigns against every person claiming or to claim the same or any part thereof.

24 Witness my hand and scrawl, in lieu of seal, at Galveston, this 29th day of December, A. D. eighteen hundred and sixty-six.

V. B. POOLE. [L. S.]

Signed, sealed, & delivered in the presence of the undersigned, each of whom is also witness to the signature of the others.

F. M. POLUND.
W'M H. COLLINS.

THE STATE OF TEXAS, *County of Galveston:*

Before me, Oscar Farish, clerk of the county court of Galveston County, this day appeared W'm H. Collins, to me known, who, being duly sworn, says V. B. Poole signed and executed the above and foregoing deed in his presence, and that he, at the request of said Poole, signed his name as a witness thereto.

Given under my hand and the seal of said county court this 20th day of January A. D. 1866.

[SEAL.] OSCAR FARISH, *Clk.*

Filed Jan'y 20th, 1866, at 12 m.
Recorded " 23, " " 10 a. m.

OSCAR FARISH, *Clk.*

THE STATE OF TEXAS, *County of Galveston:*

The above and foregoing is a true copy from the records of my office, record of deeds, &c., book " W," pages 158 & 159.

25 In witness whereof I, Oscar Farish, clerk of the county court, of said county, hereto subscribe my name & affix the seal of said county court this 9th day of January, A. D. 1869.

[SEAL.] OSCAR FARISH, *Clk.*

Subpœna.—Filed May 20th, 1870.

The President of the United States of America to the marshal of the eastern district of Texas, greeting:

You are hereby commanded to summon Joseph Price to be and appear before the honorable circuit court of the United States for the eastern district of Texas, at the court-house, in the city of Galveston, forthwith, to testify in behalf of the def't in suit pending in said court, entitled A. Stoddart vs. E. P. Hunt. Herein fail not.

Witness the Honorable Salmon P. Chase, Chief Justice of the Supreme Court of the United States, and seal of the said circuit court, at the city of Galveston, this 20th day of May, in the year of our Lord one thousand eight hundred and seventy.

[SEAL.] LEVI JONES,
Clerk Eastern District Texas, at Galveston.

26 *Marshal's return.*

Rec'd the 20th day of May, 1870, and executed same day, month, and year by reading this writ to the within-named party.

W'M E. PARKER,
U. S. M. E. D. T.
By H. S. ALLEN, *Deputy.*

Order.—From the minutes, May term, May 21st, 1870.

ALEXANDER STODDART
v.
E. P. HUNT. } C. L. 283.

This day came the plaintiff, by his attorney, and the defendant, by his attorney, and, a trial in this cause coming on to be had, the pleadings were presented and read to the court; and, the court having considered the pleas of the defendant, and it appearing that the first plea set up by the defendant is defective, and the second plea being by him withdrawn, on motion of the said defendant, he has leave to amend.

The intervention of Sophia M. Hunt, the wife of the said defendant, then coming on to be heard, to which the plaintiff has demurred, and having heard the argument of counsel, and the court having considered the premises, it is ordered that the plaintiff's demurrer to said intervention be sustained; to which ruling of the court said intervenor excepts.

27

And the issues being joined thereupon came a jury of good and lawful men, to wit: T. Ratto, Sam'l N. Carter, J. D. Skinner, Denis Neil, E. T. Barstow, John Grace, E. E. Graves, J. C. Wallis, E. Von Harten, Nathan Arnold, J. G. Rust, & E. O. Lynch, who, being duly empannelled and sworn, the plaintiff introduced evidence before the court.

Amendment to amended answer of def't.—Filed May 21st, 1870.

ALEX. STODDART
vs.
E. P. HUNT. } 283.

And now comes the defendant, and, by leave of the court for that purpose first had & obtained, files this his amended answer to plaintiff's petition, and says that the title to the lots sued for, set up by the plaintiff, is claimed to have been acquired by him by virtue of a sale made under a certain deed of trust, claimed to have been executed by this defendant on the 29th day of November, A. D. 1866, to one James E. Haviland, trustee, to secure the payment of certain notes in said deed mentioned, which is of record in book V of the land records of

28

said Galveston County, and that at such sale the plaintiff claimed to have purchased said lots; that said sale was not in accordance with said deed or the law, and the defendant says that the said lots were the homestead of the defendant, as is set forth in the amended answer, filed Jan'y 9th, 1869.

P'r PHILIP C. TUCKER,
Attorney.

Subpœna.—Issued May 23d, 1870.

The President of the United States of America to the marshal of the eastern district of Texas, greeting:

You are hereby commanded to summon P. H. Moser and J. A. H. Cleveland to be and appear before the honorable circuit court of the United States for the eastern district of Texas, at the court-house, in the city of Galveston, on the 23d day of May, 1870, at 10 a. m. to testify in behalf of defendant in a suit now pending in said court, entitled A. Stoddart vs. E. P. Hunt. Herein fail not.

Witness the Honorable Salmon P. Chase, Chief Justice of the Supreme Court of the United States, and the seal of the said circuit court,
29 at the city of Galveston, this 23d day of May, in the year of our Lord one thousand eight hundred and seventy.

[SEAL.] LEVI JONES,
Clerk Eastern District Texas, at Galveston.

Marshal's Return.

Rec'd May 23d, 1870, and executed same day, month, and year by reading this writ to the within-named parties.

WM E. PARKER,
U. S. M. E. D. T.
By H. S. ALLEN, *Deputy.*

Judgment—From the minutes, May term, May 23d, 1870.

ALEXANDER STODDART } C. L. 283.
vs.
E. P. HUNT.

The hearing in this case being resumed the parties appeared, by their attorneys, and thereupon the defendants introduced evidence before the court, and the jurors aforesaid having heard the evidence and charge of the court, for verdict say:

"We, the jury, find for the plaintiff, and two thousand three hundred dollars ($2,300) rent.

"J. C. WALLIS,
"*Foreman.*"

Wherefore it is considered by the court that the plaintiff herein, Alexander Stoddart, do have and recover of and from the defend-
30 ant herein, E. P. Hunt, the premises in his petition mentioned, and the sum of two thousand and three hundred dollars as rent for the use of the premises aforesaid, in manner and form by the jurors aforesaid assessed, also his costs about his suit in this behalf expended, for which said sum of money and costs execution shall issue.

It is further ordered and considered by the court that the writ of habere facias possessionem issue to the marshal of this district, commanding him to put the plaintiffs in possession of the premises aforesaid.

Motion for new trial.—Filed May 24th, 1870.

In the circuit court of the United States in and for the eastern district of Texas, at Galveston, May T., 1870.

ALEXANDER STODDART }
v.
E. P. HUNT.

Now comes the defendant, E. P. Hunt, in above-entitled cause, and moves the court to set aside the verdict of the jury therein and grant a new trial for the following reasons:

Because the court on the trial committed material errors injurious to the rights of the defendant.

31 1. That the court erred in ruling that the certificate of the

officer certifying to the consent and acknowledgement of S. M. Hunt, wife of said defendant, and a party to said suit, of the deed of trust claimed under by plaintiff, could not be impeached and disproved on the trial of said cause.

2. That the court erred in ruling that the homestead of said defendant, he being a married man, could be sold legally under the deed of trust put in evidence by the plaintiff.

3. That the court erred in ruling that the appointment of James Sorley as a substitute trustee in said deed of trust, by the clerk of the county court of Galveston County, was a legal and valid appointment, to empower said Sorley to execute the trust.

4. That the court erred in permitting J. C. Wallis, who was not a registered voter in this State, to be a juror upon the trial of said cause.

5. That the verdict of the jury was contrary to law and unsupported by evidence—that the said deed of trust had been executed, and the sale thereunder made in conformity with the terms thereof.

E. P. HUNT,
P'r his attorney, PHILIP C. TUCKER.

32 The following endorsement appears on the back of the foregoing motion.

Notice accepted, May 24th, 1870.

T. N. WAUL,
For Plaintiff.

Order.—From the minutes, May term, May 24th, 1870.

ALEXANDER STODDART
vs.
E. P. HUNT. } C. L. 283.

The defendant in the above cause this day appeared in open court and gave notice of appeal.

Order.—From the minutes, May term, May 25th, 1870.

ALEXANDER STODDART
vs.
E. P. HUNT. } C. L. 283.

It is ordered that, in the entry of the order and decree made in this case, on the 23d instant, after the word "attorneys," in the second line of said entry, the following be inserted: "And the defendant's amended plea having been filed, to which the plaintiff demurs, and the demurrer being considered by the court is sustained."

33 *Bill of exceptions of E. P. Hunt.—Filed June 1st, 1870.*

In the circuit court of the United States for the eastern district of Texas, at Galveston, May term, 1870.

ALEXANDER STODDART
vs.
E. P. HUNT.

Be it remembered that, upon the trial of this cause, the plaintiff

offered in evidence a deed of trust, given as security for the payment of money, under which the plaintiff claimed to recover possession of said property by virtue of a sale of the property described in his petition, said deed being executed by the defendant and his wife, (pro-ut the same,) and thereupon the said defendant objected to the introduction of said deed of trust, because the said property, being the homestead of said defendant, who was a married man at the time of the execution of said deed and of said sale, could not be legally sold under said deed of trust; and because said deed of trust could not be used as evidence to support a forced sale of the homestead of the family of said defendant E. P. Hunt and Sophia M. Hunt, his wife, (the said defendant insisting that said sale was a forced sale,) and also objected to the introduction in evidence of the said deed of trust because it did not
34 appear by said deed, and had not otherwise been proved, that James E. Haviland, the trustee named therein, had ever accepted the trust; but the court overruled said objections and permitted said deed of trust to be read in evidence to the jury; to which ruling said defendant then excepted.

And be it further remembered that, when said plaintiff offered to introduce the letter of appointment by Oscar Farish, clerk of the county court of Galveston County, of James Sorley, a substitute trustee to execute said deed of trust, the said defendant objected to the introduction of said appointment because the county clerk of Galveston County could not lawfully make such appointment and because said appointment conveyed no estate to said Sorley and did not constitute him a substitute trustee; but the court overruled said objections and permitted said appointment to be read in evidence to the jury; to which ruling the said defendant, by his attorney, then excepted.

And be it further remembered that, when said plaintiff offered to introduce in evidence the deed from James Sorley to the plaintiff,
35 the said defendant objected to the introduction of the same, because the said James Sorley had no right or power to make the sale or conveyance of the property therein described, and had himself no estate therein; but the court overruled said objection and permitted said deed to be read in evidence to the jury; to which ruling said defendant then excepted.

To all of which said rulings of the court the defendant excepts and prays that this, his bill of exceptions, be signed and sealed by the judge here presiding, and filed as a part of the records of this cause; which is accordingly done.

JOSEPH P. BRADLEY, [SEAL.]
Asso. Justice Sup. Court U. S.

Petition of Def't for writ of error.—Filed June 1st, 1870.

In the circuit court of the United States for the eastern district of Texas.

ALEXANDER STODDART)
v.)
E. P. HUNT.)

To the Honorable Salmon P. Chase, Chief Justice, and the associate justices of the Supreme Court of the United States:

The petition of Eleazer P. Hunt, a citizen of the United States and

a resident of the State of Texas, respectfully represents that,
36 upon the trial of the above entitled cause in the circuit court of the United States, of the 5th circuit, in and for the eastern district of Texas, and in the rendition of the final judgment therein, before the Honorable J. P. Bradley, one of the associate justices of said Supreme Court, there were manifold errors committed in the rulings of said court, as appears by the records thereof, to the great injury of your petitioner, and to his damage in the sum twelve thousand dollars.

Wherefore, to the end that said errors be revised and corrected by your honorable court and that justice be done in the premises, your petitioner prays that a writ of error be issued to the honorable circuit court aforesaid, commanding said court under its seal, distinctly and openly, to send up the judgment, record, and proceedings in said cause, with all things concerning the same, to the Supreme Court of the United States, to the next term thereof to be holden at Washington, in the District of Columbia, on the first Monday of December next, that the said records and proceedings be then and there inspected,
37 and for the correction of errors therein.

E. P. HUNT,
P'r PHILIP C. TUCKER,
His Attorney.

The following appears on the back of the foregoing petition for writ of error, to wit:

"The within petition is granted, and a writ of error allowed, in accordance with the prayer thereof, and the petitioner is directed to give bond in the sum of five thousand dollars, to prosecute his writ, &c., and pay all damage, &c., to be approved by the clerk of the circuit court for eastern dist. of Texas or by any commissioner of said court.

"JOS. P. BRADLEY,
"*Asso. Justice Sup. C't U. S.*"

Execution.—Issued July 28th, 1870.

The United States circuit court, eastern district of Texas.

The President of the United States of America to the marshal of the eastern district of Texas, greeting:

Whereas Alexander Stoddart, plaintiff, on the twenty-third day of May, A. D. one thousand eight hundred and seventy, at our circuit court
38 of United States in and for the eastern district of Texas, holding sessions at Galveston, recovered a judgment against E. P. Hunt, defendant, for the sum of two thousand three hundred dollars, with interest thereon at the rate of eight per centum per annum, from the said 23d day of May, A. D. 1870, until paid, with costs; and which to the said pl'ff are now adjudged.

These are, therefore, to command you that, of the goods and chattels, lands and tenements of the said defendant, you cause to be made the full amount of said judgment, interest, and costs, together with all further legal fees and charges that may accrue by virtue of this writ.

Herein fail not, and due return make of this writ, certifying how you have executed the same.

Witness the Honorable Salmon P. Chase, Chief Justice of the Supreme Court of the United States, and seal of the said circuit court of the United States for the eastern district of Texas, at Galveston, this

the 28th day of July, in the year of our Lord eighteen hundred
39 and seventy, and of American independence the ninety-fifth year.
[SEAL.] LEVI JONES,
Clerk C. C. E. D. T., at Galveston.

Bill of costs.

CLERK'S FEES.

1 copy petition cert'e & seal	95
1 citation	1 00
Making dockets and indexes	3 00
Filing 17 papers	1 70
5 subpœnas	1 25
Ent'g return	15
Affidavit	"
Swearing 2 witness'	20
Ent'g 3 orders	45
Commission to take deposition	"
Cop' of interrogatories	"
Entering judgment or decree & orders	1 20
Execution and return	1 25
Final record	13 50
Seal	" "
Attorney or proctor's fees	20 00
	$44 65

MARSHAL'S FEES.

Serving 1 citation & copy	2 50
Serving notice to take deposition	" "
Levying and returning	" "
Jury fee	5 00
Taking bond	" "
40 Summoning 8 witnesses	4 00

Marshal's return.

Received this writ July 28th, 1870, and returned Aug. 5th, 1870. No property found in my district.

WM. E. PARKER,
U. S. Marshal E. D. Texas.

Writ of error.—Filed Nov'r 12th, 1870.

UNITED STATES OF AMERICA, *ss:*

The President of the United States to the judges of the circuit court of the United States for the eastern district of Texas, greeting:

Because, in the records and proceedings, and also in the rendition of the judgment of a plea which is in the said circuit court, before you, between Alexander Stoddart, plaintiff, and E. P. Hunt, defendant, a manifest error hath happened, to the great damage of the said E. P. Hunt, as by his complaint appears:

We, be willing that the error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and pro-
41 ceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you may have the same at Washington, on the first Monday in December next, in the said Supreme Court, to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Salmon P. Chase, Chief Justice of the said Supreme Court, the twelfth day of November, in the year of our Lord one thousand eight hundred and seventy, with the seal of the court.

[SEAL.] LEVI JONES,
Clerk U. S. Circuit Court, Eastern District of Texas, at Galveston.

Citation to Supreme C't, U. S.—Iss'd Nov. 17, 1870.

UNITED STATES OF AMERICA, *ss:*

TO ALEXANDER STODDART, greeting:

You are hereby cited and admonished to be and appear at a
42 Supreme Court of the United States, to be holden at Washington, on the first Monday of December next, pursuant to a writ of error, filed in the clerk's office of the circuit court of the United States for the eastern district of Texas, at Galveston, wherein E. P. Hunt is plaintiff, and you are defendant in error, to show cause, if any there be, why the judgment in the said writ of error mentioned, should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness the Honorable Salmon P. Chase, Chief Justice of said Supreme Court of the United States, this 17th day of November, in the year of our Lord one thousand eight hundred and seventy, with the seal of the court.

[SEAL.] J. C. C. WINCH,
U. S. District Judge Eastern District of Texas.

Marshal's return.

Received this writ on the 17th day of November, 1870, and I executed the same on the 17th day of November, 1870, by serving a certified copy of this writ on T. N. Waul, esq., attorney of record, in person, in the city of Galveston, eastern district of Texas. I also presented the original writ at the same time and place.

W'M E. PARKER,
U. S. Marshal E. D. of Texas.

43 Subscribed & sworn to before me Nov. 18th, 1870.

LEVI JONES,
Clerk U. S. Circuit Court E. Dist. Texas, at Galveston.

44 *Statement of facts.—Filed Dec'r 2, '70.*

In the circuit court of the United States in and for the eastern district of Texas, at Galveston, May term, 1870.

ALEXANDER STODDART
v.
E. P. HUNT. } No. 283.

Statement of facts.

It is agreed by the attorneys of the plaintiff and defendant respectively in the above-entitled cause, that, upon the trial thereof, the plaintiff's demurrer to the defendant's amended answer, filed 9th January, 1869, was sustained by the court, the defendant having previously withdrawn so much of said amended answer as related to offsets, which facts should appear by the record.

The plaintiff offered and read in evidence the following documents, copies whereof are hereto annexed:

1st. A trust deed from E. P. Hunt and Sophia M. Hunt, his wife, to James E. Haviland, trustee, dated November 29th, 1866.

2d. A deed from Oscar Farish, clerk of the county court of Galveston County, to James Sorley, appointing said Sorley a substitute trustee, dated May 11th, 1868.

3d. A deed of conveyance from James Sorley, trustee, to Alex-
45 ander Stoddart, dated June 6th, 1868.

The plaintiff also introduced as a witness, James Sorley, who testified that the premises referred to in said deeds was worth an annual rent of twelve hundred dollars.

The defendant introduced and read in evidence a deed from Julius Kauffman, conveying said premises to Valentine Poole; and a deed from Valentine Poole & wife, conveying said premises to E. P. Hunt.

The defendant also offered evidence in support of his plea aver'ing that said premises were his homestead, which evidence was excluded by the court.

The said attorneys agree that the foregoing is a correct statement of facts, and shall be now filed nunc pro tunc, and be made part of the record in said cause.

Given under our hands at Galveston, Texas, this 2d day of December, A. D. 1870.

T. N. WAUL, *For Plaintiff.*
P. C. TUCKER,
GEO. MASON,
For Defendant.

46 [Int. rev. stamp, $1 00.]

THE STATE OF TEXAS, *County of Galveston:*

This agreement, made and entered into this the twenty-ninth day of November, in the year of our Lord one thousand eight hundred and sixty-six, between E. P. Hunt and Sophia M. Hunt, his wife, of the
Int. rev. st'ps $6 00. county of Galveston, of the first part, and James E. Haviland, trustee, of the second part, of Galveston County, and the treas-
Int. rev. st'p $1 50. urer of the underwriter's agency of the city, State, and county of New York, of the third part, witnesseth:

That whereas the said E. P. Hunt is justly indebted to the said treas-

urer of the underwriter's agency, as follows: By his certain promissory notes, bearing even date herewith, one for five thousand one hundred & seventy-five $\frac{85}{100}$ dollars, due and payable six months after date in currency; one for five thousand three hundred & fifty $\frac{85}{100}$ dollars, due and payable twelve months after date in currency; one for nine hundred & fifty-four $\frac{90}{100}$ dollars, due and payable six months after date in specie; the payment of which said notes, when due, the said E. P. Hunt
47 and Sophia M. Hunt, are desirous to assure and secure honestly and without defalcation:

Now, for and in consideration of the premises, and the sum of ten dollars to us, the said E. P. Hunt and Sophia M. Hunt, in hand paid by the said James E. Haviland, the receipt whereof is hereby acknowledged, have bargained, granted, and sold, and by these presents do grant, bargain, sell, and convey unto the said James E. Haviland, his heirs and assigns, forever, the following described property, to wit:

All that certain two lots or parcels of land lying and being in the city & county of Galveston, State of Texas, and known, designated, and described on the map or plan of the Galveston City Company as lots numbers (8 & 9) eight & nine, in block number (497,) four hundred and ninety-seven, together with the dwelling-house and improvements situate thereupon:

To have and to hold the said described property to him, the said James E. Haviland, his heirs and assigns, forever.

Upon trust, nevertheless, that the same shall continue in the possession of the said E. P. Hunt and Sophia M. Hunt, their heirs, executors, or administrators, and the profits and emoluments thereof shall
48 accrue to them until default be made in the payment of the said notes. And upon this further trust, that, if the said notes be promptly paid at maturity without defalcation, then this instrument of trust shall cease, determine, and become null and void; but if said notes, or any part thereof, shall be and remain unpaid at maturity, or when the same is due, then, and in such event, it shall and is hereby made the duty of the said James E. Haviland, trustee as aforesaid, at the request or desire of the treasurer of the underwriter's agency, his heirs, executors, or administrators, *of* the holder or holders of the said notes, to sell the property hereinbefore described, and hereby conveyed, in trust, at public auction, for cash, to the highest bidder, having given first ten days' notice of the time and place of sale in one of the newspapers of the city of Galveston; and out of the proceeds arising from such sale the trustee shall deduct therefrom a sum sufficient to pay all the expenses of the execution of this trust, one per cent. on the amount of sale for commission to the trustee, and with the balance of the proceeds of sale
49 shall pay said notes, or so much thereof, as may be and remain unpaid, with seven per cent. interest thereupon, and the balance pay the said E. P. & Sophia M. Hunt, their heirs and assigns.

And it is further distinctly understood and agreed by the said parties that, in the event of the non-payment of said notes at maturity, *that* the said James E. Haviland, trustee, may, at any time thereafter, at the request of the holder or holders of said notes sell the said property on the terms and conditions above set forth, and to the purchaser or purchasers thereof, make good and sufficient title or titles to the property thus sold. In case of the death, refusal, or other inability of said trustee to act, then the clerk of the county court for Galveston County is hereby authorized and requested to appoint another trustee to act, and the acts of such person so appointed shall be as binding as though the same had been done and performed by the original trustee.

In witness whereof the parties hereto subscribe their names and affix their (scrawl) seals this day and date above written. The words
50 "city, State, and" interlined between the fifth and sixth lines, on first page, before signing; also the word "kings" erased.

E. P. HUNT.
S. M. HUNT.

THE STATE OF TEXAS,
County of Galveston:

Before me, Oscar Farish, clerk of the county court of Galveston County, this day appeared E. P. Hunt and Sophia M. Hunt, his wife, to me known, who acknowledged the deed of trust on the 1st & 2d pages hereof written, to be their respective act and deed for the consideration and purposes therein stated. Then the said Sophia M. Hunt, on private examination, separate and apart from her said husband, after I had fully explained to her its nature and character, acknowledged the said deed of trust to be her act and deed, and declared that she had willingly signed, sealed, and delivered the same, and that she wished not to retract it.

In testimony whereof I hereby subscribe my name and affix seal of said county court, this 29th day of November, A. D. 1866.

51 [SEAL.] OSCAR FARISH, *Clk.*

THE STATE OF TEXAS,
County of Galveston:

The deed of trust on the 1st & 2d pages hereof written was filed for record in this office Nov'r 29th, 1866, at 9 a m., and was recorded the same day at 1½ p. m., in book "V," pages 182, 183, & 184.

In witness whereof I, Oscar Farish, clerk of the county court of Galveston County, hereto subscribe my name and affix the seal of said court this the 29th day of November, A. D. 1866.

[SEAL.] OSCAR FARISH, *Clk,*
P'r HUGO BROSIG, *Dep'ty.*

52 ***Oscar Farish to Ja's Sorley.—Power of substitution.***

[$1 int. rev stamp on original, cancelled.]

Be it known that, whereas E. P. Hunt and Sophia M. Hunt, of the city of Galveston, and State of Texas, of the first part, made and executed to James E. Haviland, of the second part, a certain deed, in trust, dated on the 29th of November, 1866, to secure to the treasurer of the underwriter's agency of the city, county, and State of New York, three several promissory notes made and executed by the said E. P. Hunt on the 29th of November, 1866: One for the amount of $5,175 85, another for the amount of $5,350 85, and a third for the amount of $954 90, and payable six, twelve, and six months after date, respectively; and the said notes not having been paid at maturity, and whereas the said James E. Haviland, trustee, has departed this life, and whereas the said deed in trust recites, "In case of the death, refusal, or other inability of said trustee to act, then the clerk of the county court for Galveston County is hereby authorized and requested to appoint another trustee to act; and the acts of such person so appointed shall be as binding as though the same has been done and performed by the original trustee:"

53 Now know ye that I, Oscar Farish, have made, substituted.

and appointed, and by these presents, and by virtue of the power and authority given to me by the said recited authority and request, do make, appoint, and substitute James Sorley, of the city and county of Galveston, to do, execute, and perform all such acts, deeds, matters, and things as shall and may be requisite and necessary to be done and performed, for effecting the purposes and objects in said deed in trust contained, as fully and effectually, in all respects and to all intents and purposes, as the said James E. Haviland might or could do in virtue of the power and authority aforesaid, if alive and personally present.

In witness whereof I have hereunto affixed my hand and scroll for seal, and seal of office, this 11th day of May, 1868.

[SEAL.] OSCAR FARISH,
Clerk of the County Court of Galveston County.

THE STATE OF TEXAS,
County of Galveston:

54 Before me, Henry M. Truehart, a notary public for the county of Galveston, at Galveston, on this 8th day of January, 1869, personally came and appeared Oscar Farish, clerk of the county court of Galveston County, to me well known, and acknowledged that he had executed and delivered the foregoing instrument of writing as his act, for the purposes and consideration therein expressed.

Given under my hand and notarial seal this eight' day of January, 1869.

[SEAL.] H. M. TRUEHART,
Notary Public for Galveston County, Texas.

THE STATE OF TEXAS,
County of Galveston:

The within appointment of substitute trustee was filed for record in this office Jan'y 9th, 1869, at 10 a. m., and recorded Jan'y 14th, 1869, at 4 p. m., in book Z, pages 231 & 232.

In witness whereof I, Oscar Farish, clerk of the county court of Galveston County, hereto subscribe my name and affix the seal of said court this 14th day of January, A. D. 1869.

[SEAL.] OSCAR FARISH, *Clk*,
P'r HUGO BROSIG, *Dep'ty Clk.*

55 This indenture, made the sixth day of June, in the year one thousand eight hundred and sixty-eight, between James Sorley, of the city of Galveston, of the State of Texas, of the one part, and Alexander Stoddart of the city and State of New York, of the other part:

Whereas E. P. Hunt and Sophia M. Hunt, his wife, of the city of Galveston, and State of Texas, by a certain trust deed, dated on the twenty-ninth of November, one thousand eight hundred and sixty-six, for the consideration of ten dollars, granted, bargained, sold, and conveyed unto James E. Haviland, of said city and State, his heirs, and assigns, forever, all that certain two lots or parcels of land lying and being in the city and county of Galveston, State of Texas, and known, designated, and described on the map or plan of the Galveston City Company as lots number (8 and 9) eight and nine, in block number (497.) four hundred and ninety-seven, together with the dwelling-house and improvements situated thereupon: To have and to hold the said granted premises, with the appurtenances, unto the said James E. Haviland, his heirs and assigns, forever:

Upon the following trusts, however, to wit: That whereas, the said E. P. Hunt was justly indebted to the treasurer of the underwriters' agency by his certain promissory notes, dated on the 29th of No-
56 vember, 1866—one for five thousand one hundred and seventy-five $\frac{85}{100}$ dollars, due and payable six months after date, in currency; one for five thousand three hundred and fifty $\frac{85}{100}$ dollars, due and payable twelve months after date, in currency; one for nine hundred and fifty-four $\frac{90}{100}$ dollars, due and payable six months after date in specie. Now, if the said notes were promptly met at maturity, then the above-described conveyance was to be void; but if said notes, or any part thereof remained unpaid at maturity it was made the duty of said Haviland, at the request or desire of the treasurer of the underwriter's agency, to sell said property at public auction, for cash, to the highest bidder, having given first ten days' notice of the time and place of sale in one of the newspapers of the city of Galveston; and out of the proceeds arising from such sale the trustee shall deduct therefrom a sum sufficient to pay all the expenses of the execution of said trust, one per cent on the amount of sale for commission to the trustee, and with the balance of the proceeds of sale pay said notes, or so much thereof as should remain unpaid, with seven per cent. interest thereupon, and the balance pay the said E. P. and Sophia M. Hunt, their heirs and assigns; and, it being further distinctly understood and agreed by the said parties that, in the event of the non-payment of said notes at maturity, that the said James E. Haviland, trustee, may at any time thereafter, at the re-
57 quest of the holder or holders of said notes, sell the said property on the terms and conditions above set forth, and to the purchaser or purchasers thereof make good and sufficient title or titles to the property thus sold; and whereas it was provided in said trust deed, that in case of the death, refusal, or other inability of said trustee to act, then the clerk of the county court for Galveston County was thereby authorized and requested to appoint another trustee to act, and the acts of such person so appointed should be as binding as though the same had been done and performed by the original trustee. And whereas the said James E. Haviland departed this life some time in 1867, and by force of the authority and request made, Oscar Farish, clerk of the county court for Galveston County, did, on the 11th day of May, 1868, make, appoint, and substitute James Sorley in the place and stead of the said James E. Haviland, to do and perform all such acts as might be requisite and necessary to effect the purposes and objects of said trust; and whereas, the said notes were not paid at maturity or at any time since by the said E. P. Hunt, or by any one for him, and the holder of said notes requested and urged that the said James Sorley should proceed to execute said trust, and the said James Sorley did therefore, in pursuance of such request, and by virtue of the said appointment and authority conferred in said trust deed, caused the said premises to be advertised, and notice given for ten days previous
58 to said sale in the Daily Despatch, a newspaper published in the city of Galveston, of the time and place of sale as required by said trust deed: and the said premises being offered at public outcry, and the same having been struck off to the said Alexander Stoddart for the sum of ten thousand dollars, it being the highest and best bid for the same:

Now, therefore, this indenture witnesseth: That the said James Sorley for and in consideration of the premises and also for and in consideration of the sum of ten thousand dollars, to him in hand paid by the said Alexander Stoddart, the receipt of which is hereby acknowledged be-

fore the signing, sealing, and delivery of these presents, have granted, bargained, sold, and conveyed, and by these presents do grant, bargain, sell, and convey unto the said Alexander Stoddart, and to his heirs and assigns forever, all that certain two lots or parcels of land lying and being in the city and county of Galveston, and State of Texas, and known and designated and described on the map or plan of the Galveston City Company as lots number (8 and 9,) eight and nine, in block number (497,) four hundred and ninety-seven, together with the dwelling-house and improvements situated thereupon, being the same as is described and conveyed by said trust deed, and all the estate, right, title, interest, claim and demand at law or in equity of him the said
59 Sorley, and also of the said James E. Haviland and the said E. P. Hunt and Sophia M. Hunt, his wife, as far forth as the said James Sorley hath power to grant and convey the same, of, in, and to the premises and every part and parcel thereof: To have and to hold the above granted and bargained premises with the appurtenances unto the said Alexander Stoddart, his heirs and assigns, to the sole and only proper use and behoof of the said Stoddart, his heirs and assigns, forever.

In witness whereof the said James Sorley has hereunto set his hand and scroll for seal, the day and year first above written.

(Signed) JAMES SORLEY, [SEAL.]
Trustee.

[Internal revenue stamp $10.]

THE STATE OF TEXAS, *County of Galveston:*

Before me, Oscar Farish, clerk of the county court of Galveston County, this day appeared James Sorley, to me known, who acknowledged the above and foregoing deed to be his act and deed as trustee, for the considerations and purposes therein stated. In testimony whereof I hereunto subscribe my name and affix the seal of said county court this 15th day of June, A. D. 1868.

SEAL OF CO'TY COURT, GAL. CO. (Signed) OSCAR FARISH, *Clerk.*

STATE OF TEXAS, *County of Galveston:*

The deed on the annexed four pages hereof written, was filed
60 for record, June 15th, 1868, at 3 p. m., and recorded the same day, at 5 p. m., in book X, pages 504, 505, and 506.

In witness whereof I, Oscar Farish, clerk of the county court of Galveston County, hereto subscribe my name and affix the seal of said court this 15th day of June, A. D. 1868.

SEAL OF COUNTY COURT OF GALVESTON COUNTY. (Signed) OSCAR FARISH, *Clk.*
" P'r HUGO BROSIG, *Deputy Clk.*

61 UNITED STATES OF AMERICA,
Eastern District of Texas:

I, Levi Jones, clerk of the circuit court of the United States for the eastern district of Texas, at Galveston, do hereby certify the foregoing sixty pages of writing to contain a true and complete transcript of the record and all proceedings had in the cause lately pending in said

court, entitled Alexander Stoddart v. E. P. Hunt, and numbered on the docket thereof No. 283, as the same now appear in my office.

To certify which, witness my hand and seal of said circuit court at Galveston, December 2d, A. D. 1870.

[SEAL.]

LEVI JONES,
U. S. Circ't Court E. D. T., G.

62 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the judges of the circuit court of United States for the eastern district of Texas, greeting:

Because, in the records and proceedings, and also in the rendition of the judgment of a plea which is in the said circuit court, before you, between Alexander Stoddart, plaintiff, and E. P. Hunt, defendant, a manifest error hath happened to the great damage of the said E. P. Hunt, as by his complaint appears:

We, being willing that the error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you may leave the same at Washington, on the first Monday in December next, in the said Supreme Court to be than and there held, that, the
63 record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Salmon P. Chase, Chief Justice of the said Supreme Court, the twelfth day of November, in the year of our Lord one thousand eight hundred and seventy, with the seal of the court.

[SEAL.]

LEVI JONES,
Clerk U. S. Circuit Court Eastern District of Texas, at Galveston.

64 (Indorsed:) C. L. 283. Alexander Stoddart v. E. P. Hunt. Writ of error to Supreme Court U. S. Filed November 12th, 1870. Levi Jones, clerk.

65 UNITED STATES OF AMERICA, *ss:*

TO ALEXANDER STODDART, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to holden at Washington, on the first Monday of December next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the eastern district of Texas, at Galveston, wherein E. P. Hunt is plaintiff, and you are defendant in error, to show cause, if any there be, why the judgment in the said writ of error mentioned, should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness the Honorable Salmon P. Chase, Chief Justice of said Supreme Court of the United States this 17th day of November, in the year of our Lord, one thousand eight hundred and seventy, with the seal of the court.

[SEAL.]

J. C. C. WINCH,
U. S. District Judge, Eastern District of Texas.

66 (Indorsed:) Alexander Stoddart v. E. P. Hunt. Citation to Supreme Court U. S. Returned and filed Nov'r 18th, 1870. Levi Jones, clerk.

Received this writ on the 17th day of November, 1870, and I executed the same on the 17th day of November, 1870, by serving a certified copy of this writ on T. N. Waul, esq'r', attorney of record, in person, in the city of Galveston, eastern district of Texas. I also presented the original writ at the same time and place.

WM E. PARKER,
U. S. Marshal E. D. of Texas.

Subscribed & sworn to before me, Nov'r 18th, 1870.

LEVI JONES,
Clerk U. S. Circuit Court, E. Dist. Texas, at Galveston.

(Indorsement on cover:) No. 469. E. P. Hunt, plaintiff in error, vs. Alexander Stoddart. E. Texas C. C. U. S. Filed 6th January, 1871.

Supreme Court of the United States.

DECEMBER TERM, 1871.

No. 252.

E. P. HUNT, PLAINTIFF IN ERROR,

vs.

ALEX. STODDART.

Brief for Defendant in Error.

This cause comes up by writ of error to the Circuit Court of the United States, for the Eastern District of Texas.

The Case.

This was an action of ejectment to recover certain lots of land which the plaintiff below had purchased at a sale made under a deed of trust, made to secure a certain debt.

His written evidence of title consisted in part:

First. Of the deed of trust conveying the property to one Haviland, with power, upon default made in payment of the debt, to sell and convey, and in case of Haviland's death, refusal or inability to act, then the clerk of the county court for Galveston county, was to appoint a substitute to make the sale and conveyance.

Second. The deed of the clerk of Galveston appointing one Sorley to make the sale and conveyance in the place of Haviland, deceased.

Third. The deed of Sorley to the plaintiff.

Upon the offer of the plaintiff to read these in evidence,

the defendant objected; his objections were overruled, and the evidence was received. Verdict and judgment were rendered for plaintiff, and this writ is brought by the defendant below.

At the date of preparing this brief, no brief has been filed by the plaintiff in error; it is presumed he will assign for error the ruling of the court, admitting the above-mentioned deeds in evidence; no other point is saved by the exceptions. Record, pages 13, 14.

Points.

1. All the objections were properly overruled; they were in effect objections to the legal effect of the deed, (Rec. pp. 13, 14,) and were premature. The plaintiff was making out his case, and had a right to put in evidence any muniment of title, "if it has any legal bearing whatever on the title of the plaintiff." So ruled this court in Webb *vs.* Den, 17 Howard, 576.

Certainly a deed made by the defendant himself, and other deeds made in the precise mode authorized by him, have *some* legal bearing on his title, and the ruling of this court in 17 Howard directly applies. And this would dispose of all the objections.

2. But if the objections made when the evidence was offered, had been made at the proper time, and in a form to raise the question as to the effect of the deeds, they were all untenable.

a. The deed of trust was objected to because it had not been proved that Haviland had accepted the trust. Acceptance of an estate is presumed in the absence of proof to the contrary.

b. The deed was objected to "*because* the said property, being the homestead of said defendant, who was a married man at the time of the execution of said deed and if said sale, could not be legally sold under said deed of trust; and because said deed of trust could not be used as

evidence to support a forced sale of the homestead of the family of said defendant, E. P. Hunt, and Sophia N. Hunt, his wife, (the said defendant insisting that said sale was a forced sale.)" Rec. p. 14.

The substance of this objection seems to be, that the lots were exempt from sale as homestead, under the laws of Texas, which exempt homesteads from "*forced* sale."

But "*forced sale*" has been judicially determined to be a sale made under the process of the court, and in the mode prescribed *by law*. Sampson and King *vs.* Williamson, 6 Texas, 102. And a sale under a power in a mortgagee or trustee would not be a forced sale. Id.

In other words, a sale made in pursuance of the directions of the husband and wife, and by virtue of powers voluntarily conferred by them for the purpose, is not as to them a *forced* sale; and so the case above cited rules.

The constitution (sec. 22), after providing that the legislature may exempt as homestead, any lots in a town not exceeding in value $2,000, proceeds, "nor shall the owner if a married man, be at liberty to alienate the same unless by consent of the wife, in such manner as the legislature may hereafter prescribe."

The legislature prescribed that a deed by the husband and wife, executed and acknowledged like the deed in question, should be effectual to pass the separate property of the wife, or of the homestead of the family, or other property exempt from execution. Digest of Texas Laws; title, Conveyances.

c. The next objection was to the admissibility in evidence of the deed of the clerk of the court of Galveston county, appointing Sorley in place of Haviland, deceased, *because* the said clerk could not lawfully make the appointment, *and because* said appointment conveyed no estate to Sorley, and did not constitute Sorley a substitute trustee.

This objection is the same in substance as the next, viz:

d. The last objection was to the admissibility of Sorley's

deed to Stoddart, *because* Sorley "had no right or power to make the sale or conveyance of the property, and had himself no estate therein."

These objections are not valid under the laws of Texas.

If, as was objected, Sorley had no estate in the land, then he was the agent or attorney of the grantees. The deed of trust contained a power of sale to Haviland, and a provision authorizing the clerk of the court to appoint another person to sell and convey in case of Haviland's death. This was, in effect, a power to Haviland, with a power of substitution, which was exercised in conformity with the provisions of the deed; and the person so substituted was vested as fully with the power as Haviland himself.

Now, it has been adjudged, that under the statute above cited, respecting conveyances, husband and wife may constitute an attorney to sell and convey.

The court said, "It is believed to have been the contemporaneous construction of the statute and the practice under it, for married women thus to convey and *to hold such conveyances void, would unsettle many estates.*"

Patton vs. *King*, 26 Texas, 685.

And also that it is no objection to a conveyance so made, that the attorney has made the deed in his own name and in his own right.

Rogers vs. *Bracken*, 15 Texas, 565.

Rogers vs. *Frost*, 14 Texas, 267.

The deed to the plaintiff might then be supported as the deed of Hunt and wife themselves; and if it was their deed, they could not, as against such deed, set up an outstanding title in Haviland's heirs, for they would be estopped to do this by their deed conveying the land, so the plaintiff would have a title by estoppel, and a title by estoppel is sufficient to recover upon in ejectment.

Stoddard vs. *Chambers*, 2 How., 284.

Van Rensalaer vs. *Kearny*, 11 How., 297.

But again, by the the death of Haviland the estate in his heirs became a mere naked trust. They held the legal title only to the use of the grantees and their assigns, and was bound to convey to the holder of the equitable title.

And under the laws of Texas, a plaintiff may recover in ejectment "on any evidence of right to land recognised by the laws of this government." Digest, sec. 5203.

In the note to this section, the annotator shows that any equitable right of possession will support an action of ejectment in the courts of Texas.

If this rule be followed by the United States Courts, in Texas, then it is clear that the plaintiff had, at least, an equitable right to the land, and he could recover upon his equitable title.

Neither by plea nor in any other mode is the question raised upon the record as to the sufficiency of such title to warrant a recovery in the courts of the United States. The exceptions are limited entirely to the admissibility of the deed in evidence, and if they were evidence for any purpose, the objection was properly overruled. The effect of the deed was a distinct question which, if made at the proper time, would have been disposed of by the court. The objection to the admissibility of the evidence was properly overruled, aud no other point was ruled by the court or rises upon the exceptions taken.

Conclusion.

It is submitted that the judgment should be affirmed.

J. M. CARLISLE,
J. D. McPHERSON,
Attorneys for Appellant.